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SUPREME COURT OF THE UNITED STATES.

No. ~~96~~. 43.

JOHN MINOR, PLAINTIFF IN ERROR,

VERSUS

SHURBAL TILLOTSON.

IN ERROR TO THE DISTRICT COURT U. S. FOR EASTERN LOUISIANA.

DISTRICT COURT OF THE UNITED STATES—*Eastern District of Louisiana.*

Be it remembered, that on the ninth day of November, in the year of our Lord one thousand eight hundred and twenty-seven, into the District Court of the United States, for the Eastern District of Louisiana, came John Minor, by his attorneys, Mercier and Buchanan, and filed the following petition, to wit:

To the Honorable the District Court of the United States for the Eastern District of Louisiana.

The petition of John Minor, a citizen of the State of Mississippi, and residing at Natchez, in the said State, respectfully showeth: That your petitioner is the just and lawful owner of two tracts of land situated, lying, and being adjoining, and contiguous to each other, on the left bank of the river Mississippi, in the parish of Ascension, in the State of Louisiana, and containing, severally, one hundred and seventy-two acres and sixty-seven hundreths of an acre, and two hundred and four acres and sixty hundredths of an acre of superficial measure, as described and laid down in two plats and certificates of survey made by Robert Loyd, a deputy surveyor of the United States, on the thirteenth and fourteenth day of September, 1824, respectively.

Your petitioner shows that he holds said tracts of land by purchase from the United States on the 28th day of August, 1824, and, also, by virtue of a sale from Wade Hampton to your petitioner, passed before Michael de Armas, Notary Public, at the city of New Orleans, on the 5th day of April, 1819.

Your petitioner further shows that Jubal Tillotson, a citizen of the State of Louisiana, and residing in the parish of Ascension, in the said State, and Jeremiah Pritchard, also a citizen of the State of Louisiana, and residing in the parish of Iberville, in the said State, have violently and illegally entered and trespassed upon the said above described two tracts of land, so as aforesaid belonging to your petitioner, and have committed waste thereupon for more than one year last past, by cutting down timber trees thereupon growing, and by erecting buildings and fences, and making plantations thereupon; and that the said Tillotson and Pritchard still keep violent possession of the portion of the above described tracts so as aforesaid entered and trespassed upon by them, being to the extent of one hundred acres, be the same more or less, in violation of the right of ownership of your petitioner, and to his damage three thousand dollars.

Your petitioner further shows that he is the true and lawful owner of one tract of land, containing eight hundred and one half superficial arpens, situated, lying, and being in the parish of Ascension, in the State of Louisiana, as described and laid down on a plat and certificate of survey, made by Walker Gilbert, deputy surveyor of the United States for the Eastern District of the Territory of Orleans, on the 22d day of March, 1811; which land is held by your petitioner by virtue of a grant from the Spanish Government to Louis Leconte, confirmed in the name of Madame Louis Judice, by act of Congress of the 11th May, 1820. Your petitioner shows that said Jubal Tillotson and Jeremiah Pritchard have, at sundry times, unlawfully and violently entered and trespassed upon the said above described tract of land, to your petitioner so as aforesaid belonging, and committed thereupon various acts of waste, by cutting down cypress and other valuable timber trees, and by making and carrying off pickets, timber and building materials, from the said tract of land, in violation of your petitioner's right of ownership in the said tract of land and its appurtenances, and to the damage of your petitioner three thousand dollars.

Wherefore, your petitioner prays, the premises being considered, that the said Jubal Tillotson and Jeremiah Pritchard may be cited to appear and answer this petition, and, after due proceedings, that judgment may be rendered against them, jointly and severally, and in favor of your petitioner, for the sum of six thousand dollars damages for their illegal acts of entry, trespass and waste, as aforesaid, committed upon the several tracts of land above described, belonging to your petitioner; and, also, that your petitioner have a writ of possession from this honorable court, to restore to him the quiet and peaceable possession of the two first mentioned tracts of land aforesaid, so as aforesaid illegally, violently, and wilfully disturbed by the said Jubal Tillotson and Jeremiah Pritchard, with such other and further relief as justice, equity, and the nature of the case, may require.

And, as in duty bound, &c.

MERCIER & BUCHANAN,
Att's for Pl'ff.

Whereupon, the following citations were issued from the Clerk's office, to wit:

DISTRICT COURT OF THE UNITED STATES—*Eastern District of Louisiana.*

The President of the United States to the Marshal of the Eastern District of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded to cite Jubal Tillotson and Jeremiah Pritchard, so that they be and appear at the district court of the United States for the Eastern District of Louisiana, to be holden in the city of New Orleans, on the second Monday of December next, to answer to the complaint of John Minor; and that they do file their defence or answer, with the clerk of said court on or before the same, or judgment will be given against them by default; and have you then and there this writ.

Witness, the honorable T. B. Robertson, Judge of said court, at the city of New Orleans, this 10th day of November, 1827, and 52d year of the Independence of the United States.

F. W. LEA, *Dep. Clerk.*

COUR DE DISTRICT DES ETATS UNIS—*Pour le District Oriental de la Louisiane.*

Le President des Etats Unis, au Maréschal du District Oriental de la Louisiane, ou a son deputé dument autorise, salut:

Vou sétes commandé de citer Jubal Tillotson et Jeremiah Pritchard, pour

qu'ils avant a compaîratre á la cour de district des Etats Unis pour le District Oriental de la Louisiane, qui siègua dans la ville de la Nouvelle Orleans, le 2me. Lundi de Decembre prochaine, à l'effet des repondre á la plainte de Jean Minor et d'y remettre reponse ou defense au greffier de la dite cour, avant ou le même jour, faute de quoi, jugement par défaut sera rendu contre eux et vous fuez votre rapport de cet ordre.

Temoin, l'honorable T. B. Robertson, Juge de la ditte cour á la Nouvélle Orléans, ce 10me. jour de Novembre, 1827, et la 52me. année de l'Independance des Etats Unis.

F. W. LEA, *Dep. Greffier.*

Upon which writ, the marshal made the following return, to wit:
Served by delivering a copy of the petition, and this citation, to Jeremiah Pritchard, in person, on the 24th Nov. 1827.

L. DARBOIS, *D. M.*

Returned, 10th December, 1827.

J. NICHOLSON, *Marshal.*

District Court of the United States—*Eastern District of Louisiana.*

The President of the United States to the Marshal of the Eastern District of Lousiana, or to his lawful deputy, greeting:

You are hereby commanded to cite Jubal Tillotson and Jeremiah Pritchard, so that they be and appear at the district court of the United States for the Eastern District of Louisiana, to be holden in the city of New Orleans, on the second Monday of December next, to answer to the complaint of John Minor; and that they do file their defence, or answer, with the clerk of said court on or before the same, or judgment will be given against them by default; and have you then and there this writ.

Witness, the honorable T. B. Robertson, Judge of said court, at the city of New Orleans, this 10th day of November, 1827, and 52d year of the Independence of the United States.

F. W. LEA, *Dep. Clerk.*

Cour de District des Etats Unis—*Pour la District Oriental de la Louisiane.*

Le President des Etats Unis, au Maréschal au District Oriental de la Lousiane, ou a son deputé dument autorisé, salut:

Vous étes commandé de citer Jubal Tillotson et Jeremiah Pritchard pour qu'ils avant a comparaître a la cour de district des Etats Unis, pour le District Oriental de la Louisiane, que siégua dans la ville de la Nouvelle Orléans, le 2me. Lundi de Decembre prochaine, á l'effet de répondre à la plainte de Jean Minor, d'y remettre réponse ou défense au greffier, de la dite cour, avant ou le même jour, faute de quoi, jugement par defaut sera rendu contre eux, ét vous fuez votre rapport de cet ordre.

Temoin, l'honorable T. B. Robertson, Juge de la dite cour á la ville de la Nouvelle Orléans, ce 10me. jour de Novembre, 1827, et la 52me. année de l'Independance des Etats Unis.

F. W. LEA, *Dep. Greff.*

Upon which citation, the marshal made the following return, to wit:
Served by delivering a copy of the petition, and this citation, to ——— Tillot-

son, the brother of the defendant, a free white person above the age of fourtien years, on the 24th Nov. 1827, found on the land in dispute.

L. DARBOIS, *D'y M.*

Returned 10th December, 1829.

J. NICHOLSON, *U. S. Marshal.*

And afterwards, to wit: on the 11th day of December, 1827, came the defendants, S. Tillotson and Jeremiah Pritchard, by their attorney, Levi Pierce, Esq. and filed the following award of oyer, to wit:

S. TILLOTSON,
ads.
JOHN MINOR.

U. S. District Court, Eastern District Lousiana.

The defendant prays oyer of the titles allowed to by the plaintiff in his petition, and cannot answer further until the same be filed.

L. PIERCE.

J. PRITCHARD,
adsm.
JOHN MINOR.

U. S. District Court, Eastern District Louisiana.

J. Prichard comes and prays oyer of the deeds referred to by the plaintiff, before further answering to the merits alleged in the petition of the plaintiff.

L. PIERCE.

And afterwards, to wit: on the 16th day of February, 1828, came Jerre. Pritchard, one of the defendants, by his attorney, Levi Pierce, Esq. and filed the following answer and disclaimer, to wit:

TILLOTSON & PRITCHARD,
adsm.
JOHN MINOR.

U. S. District Court.

The answer of Jesse Pritchard, respectfully shows, That he is not owner of the property described in the petition of plaintiff, and has no concern or interest therein, as will appear by the annexed sales; and he denies having any obligation to answer further, saying that he is not trespassing, and has nothing to do with the land claimed by plaintiff; wherefore he prays to be hence dismissed with his costs, &c.

L. PIERCE.

And afterwards, to wit: on the seventeenth day of May, 1828, came the defendant, Shabal Tillotson, by his attorney, Levi Pierce, and filed the following answer, to wit:

SHABAL TILLOTSON,
adsm.
JOHN MINOR.

U. S. District Court, Eastern District Louisiana.

The defendant, S. Tillotson, for answer to the petition of John Miner, denies

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all and singular the allegations in said petition contained, and says the said John Minor has no good and sufficient title in law to the property by him described. Defendant, for further answer, if any be necessary, pleads prescription of thirty years, and alleges that he, and those through whom he claims, have duly possessed whatever property is claimed of him by plaintiff, for and during the said term of thirty years.

Defendant in the same manner pleads prescription of twenty years.

Defendant in the same manner pleads prescription of ten years.

And, if further answer be necessary, which is denied, defendant answers and says, that he is the true and lawful owner and possessor of a certain tract of land in the parish of Ascension, as purchased and set forth and described in the acts of sale heretofore filed by Jesse Pritchard in this case, being from Jesse Pritchard to this defendant, dated 13th April, 1825, and 20th June, 1827, and which are prayed to be considered as part of this answer, executed before the parish Judge and duly recorded; and that he has possessed and occupied said land, and none other, in said parish, and has in no manner trespassed on any other person's property; nor does he claim any other, save what is described in said act of sale, and if the said Minor claims, by virtue of any pretended titles, any part of the property to him conveyed, as aforesaid, that this defendant can in no manner be affected thereby; because he shows that the said land, so bought of the said Pritchard, was by him purchased at a judicial sale on the 28th November, 1818, being the sale of the succession of Jean Baptiste Allain and of Marie Marguarette Blanchard, his widow, by the parish Judge of the parish of Ascension, the which was afterwards confirmed to said Pritchard by act of sale and confirmation, by the heirs of J. B. Allain, dated 13th August, 1822, passed before the said parish Judge; all which will more fully appear by the two acts annexed; and he shows that the said Jean Baptiste Allain was sole owner and possessor of all said tract; part of which is now unjustly claimed by virtue of a full and complete Spanish grant, accorded to him in the year 1789, and duly recorded and approved by the land commissioners.

Wherefore he prays to be hence dismissed, with his costs, &c. and that the case be tried by a jury.

L. PIERCE.

Documents annexed, and referred to, in the foregoing answer:

On the twenty-eighth day of November, 1818, Joseph Brand and Auguste de l'Anne are appointed appraisers of a tract of land belonging to the heirs of Jean Baptiste Allain, deceased, and Marie Marguarite Blanchard, his wife; and, being duly sworn, do appraise the said tract of land at the sum and value of three thousand dollars; the said tract of land being situated in the parish of Iberville, on the high lands between the river Mississippi and Galveztown, being the same land which was granted to Baptiste Allain, under patent of Estevan Miro, then Governor of Louisiana, bearing date 16th January, A. D. 1789, containing eight hundred arpens, conformably to the figurative plan accompanying said patent, bounded by eight lines, and, at the time of surveying, by vacant lands on all sides but one, which is on said plan marked, as claimed by Louis le Compte, unsurveyed, signed, Joseph Baud, Auguste de l'Anne, John Dutton, parish Judge. On the day and year above written, the said land was put up and offered to public sale, after having been advertized as the law directs, on the following terms and conditions: one thousand dollars in March next to be paid, and the remainder to be paid, one half in March, 1820, and the remainder in March, 1821; the purchaser giving good and sufficient security, with mortgage on the land, but absolutely without warranty on the part of the sellers, except from themselves and persons claiming, or through them, or through or by the title or patent under which they sell and convey the said land. The said land was, after having been duly cried, adjudged to Jesse Pritchard, the highest bidder, for the sum of three thousand five hundred dollars, which he binds himself to pay to the vendors, their heirs or assigns, at the terms and conditions above stipula-

ted, and accept the same with all the exceptions of warranty therein mentioned; the said land to remain specially mortgaged until final payment. (Signed) Niavictur, John Dutton, parish Judge of Iberville parish.

Before John Dutton, parish Judge, in and for the parish of Iberville, personally came and appeared Jean Baptiste Allain, inhabitant of said parish, Victoire le Blane, late widow of Pierre Allain, and natural tutrex to the minor children, Marie Celessie Allain and Pierre Ursin Allain, children and heirs of the said Pierre Allain, now deceased; said Victoire duly authorized in the participations in this act by her present husband, Etienne Tasson; likewise present Marie Allain, represented by her husband, Francois Rivas, here present, and obliging himself personally for his wife's ratification of this act; 4. Bernard Allain; 5. Valerie Commun, represented by his attorney in fact, Etienne Tassan, who, jointly with the said Jean Baptiste Allain, binds himself for the ratification of this act by the said Valerie Coman; 6th. Firmin D. Laudry, natural tutor to Firmin D. Laudry, 2d. and Adolphus Landey, being minors under the age of puberty; 7. Gilbert Commo; 8 .Florentine Zanplet, representing his wife, Carmetite Carmon, and, lastly, Marie Hortense and her husband, the aforesaid Joseph Gil; which said Allains and Commans, and their representatives, did declare that, as heirs and representatives of Marie Marguarite Blanchard, first wife, then widow of Jean Baptiste Allain, deceased, then wife of Etienne Comman, deceased, did declare, that whereas on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and eighteen, there was set up and offered for sale, to the highest bidder, the right, title, interest and demand, of the legal representatives of Jean Baptiste Allain and the said Marie Marguarite Blanchard, in and to a certain tract of land described in the act hereunto annexed, and whereof the following is an extract: "On the day and year above written, the said land was put up and offered to public sale, after having been duly advertised as the law directs, on the following terms and conditions: one thousand dollars in March next to be paid, and the remainder to be paid, one half in March, 1820, and the remainder in March, 1821; the purchaser giving good and sufficient security, with mortgage on the land, but absolutely without warranty on the part of the sellers, except from themselves or person or persons claiming under or through them, or by the title and patent under which they sell and convey the said land; the said land was, after having been duly cried, adjudged to Jeré Pritchard, the highest bidder, for the sum of three thousand five hundred dollars, which he binds himself to pay to the vendors, their heirs or assigns, at the terms and conditions above stipulated, and accepts the same with all the exceptions of warranty therein mentioned; the land to remain specially mortgaged until final payment. And whereas the proces verbal of adjudication was never recorded, in consequence of the said Jeré Pritchard having failed to furnish security at the time of adjudication, agreeably to the terms of said sale; and whereas the said act of adjudication hath never been, by any competent tribunal or court of justice, declared void, and whereas the said heirs have, by divers acts of receiving, in part, the said sum of adjudication from the said Jeré Pritchard, recognized the validity of said adjudication, they, the said appearers, do, jointly and severally, promise, bind, and oblige themselves, as well as their heirs, and the heirs now absent from the making of this act, the appearers holding themselves bound, jointly and severally, for the validity hereof, to ratify and confirm, and hold for good, valid, and firm, the said act of adjudication, transferring to the said Jere Pritchard, all the right, title, interest, claim, or demand, which they, or any of them, or any other person has, or may have a right to claim, by virtue of the Spanish grant for said lands to Baptiste Allain, the original grantee and ancestor of said Allains and Commons; which grant the said Jeré Pritchard declares he is acquainted with, having seen the same, and the titles on which said grant is founded. And the said appearers declare further to have received of and from the said Jeré Prichard, on account

of the price of the adjudication of the said land, the following sums: paid to Bernard Allain, on the twelfth day of April, eighteen hundred and nineteen, the sum of five hundred and sixty-four dollars, to F. D. Landry, on the nineteenth day of April, eighteen hundred and twenty-one, one hundred and ninety-four dollars and forty-four cents; and on the ninth day of March, 1822, to Hortense Coman, and her husband, Joseph Gil, the sum of two hundred and twenty-three dollars; and this day to the heirs, jointly, the sum of two hundred and eighty dollars thirty-seven and a half cents; all which payments having been made out of the presence of the undersigned Judge and witnesses, the appearers renounce the exception non memerata therefor.

And it is further agreed and established between the parties to this act, that for the payment of the balance due on the said price of adjudication, a delay is granted to the said Jerry Pritchard until the end of March next ensuing the date hereof. And the said balance as fixed by and between the said parties, including stipulated interest, amounts to two thousand five hundred and fifty-one dollars sixty-two and a half cents; which said sum of two thousand five hundred and fifty-one dollars and sixty-two and a half cents, the said Jere Pritchard binds and obliges himself to pay to the said heirs or to Etienne Tassin, who is by them hereby fully empowered the same to receive, and receive in all the month of March next ensuing the date hereof; and the said Etienne, on the receipt of said balance, is hereby empowered and authorized to cause to be made and executed, by authentic act, a full release and acquittance of said balance, and mortgage retained for its surety; and the said heirs oblige themselves to deliver to the said Jere Pritchard, or to his legal representatives, the titles of said land. The said land is to remain specially mortgaged for the payment of said balance, or part of the price, and interest unpaid, of said land. The description of the said land is set forth in the proces verbal of the estimation of said land, hereunto annexed, under my public seal.

Thus done and passed, the thirteenth day of August, in the year of our Lord one thousand eight hundred and twenty-two, in presence of Allen Ellis and Victor Chiason, witnesses, who have hereunder set their hands with the parties to this act, and me, Judge aforesaid. (Signed) Jean Baptiste Allain, his x mark, Etien Tassan, fisent pour Victorie le Blanc, tutrice dutervelle de Maria Elies Allain, et Dursim Allain, les enfanes, Francois Rivas, Bernard Allain, Valery Commoux, Jermin D. Landry, Gilbert Commaux, Florentia Templet, Jere Pritchard, Victor Chiasson, Allen Ellis, Joseph Gil. John Dutton, parish Judge.

I, John Dutton, parish Judge, in and for the parish of Iberville, do hereby certify the foregoing to be true copies of the proces verbal of adjudication of a tract of land belonging to the succession of Jean Baptiste Allain and Marie Magdaline Blanchard, and of an act of transactions between the heirs of said Jean Baptiste and Marie Magdaline, the originals whereof remain in my office, and therein duly recorded. In witness whereof, I have hereunto set my hand and public seal, this twenty-fifth day of December, in the year of our Lord one thousand eight hundred and twenty-seven.

JOHN DUTTON,
Parish Judge.

Before me, John Dutton, parish Judge, in and for the parish of personally came and appeared Doct. Jere Pritchard, of the said parish, who did sell and convey, assign, transfer, and set over, unto Mr. Shubal Tillotson, of the said parish, here present, and accepting purchase for himself, his heirs and assigns, one equal and undivided half of a certain tract or parcel of land, situated on the highlands, between the Mississippi and Galveztown, in, or partly in, the parish of Iberville; said land containing eight hundred arpens and being the same land which the present vendor purchased from the heirs of Jean Baptiste Allain and Margueret Blanchard, by act of sale, before me passed, the thirteenth day of August, in the year eighteen hundred and twenty-two; the said Jere

Pritchard selling and transferring the same title which he acquired to said land at the sale aforesaid. The said Jere Pritchard likewise sells to the said Shubal Tillotson, one equal and undivided half of all the stock and cattle, and horses, and farming utensils on said tract of land, or thereunto belonging.

This sale is made for and in consideration of the sum of three thousand five hundred dollars, which the vendor acknowledges to have received from the purchaser before making this act, and out of the sight of witnesses, therefor renouncing the exception non , and fully releasing and acquitting the purchaser for the price of said land.

Thus done and passed in my office, the thirteenth day of April, eighteen hundred and twenty-five, in presence of N. Ibenloti and Balthasar Dapny, witnesses, who have signed with the appearers, and me, Judge aforesaid. Signed, J. Pritchard, Shubal Tillotson, B. Dapny, Ibenloti. John Dutton, parish Judge.

A true copy of the original remaining in my office. Given and attested under my hand and public seal, this twenty-fifth day of December, in the year eighteen hundred and twenty-seven.

JOHN DUTTON,
Parish Judge.

Before me, John Dutton, parish Judge, in and for the parish of Iberville, personally came and appeared Doct. Jere Pritchard, of the said parish, who did sell, convey, assign, transfer, and set over, unto Mr. Shubal Tillotson, also of the said parish, present, and accepting purchase for himself, his heirs and assigns, one equal and undivided half of a certain tract or parcel of land, situated on the high lands between the Mississippi and Galveztown, in, or partly in, the parish of Iberville, and partly in the parish of Ascension ; the other undivided half, whereof the present vendor sold to the present purchaser, by act before me passed, the 13th day of April, 1825, the whole containing eight hundred superficial arpens: the said Jere Pritchard selling and transferring the same title which he acquired from the heirs of Baptiste Allain and Marguaret Blanchard, deceased ; and the said Jere Pritchard does not warrant the title of said land, but transfers to the present purchaser, all the right he acquires of claiming warranty from the said Pritchard's vendors ; which special warranty the present purchaser accepts, and declares to be satisfied with, having been, and being, acquainted with the titles to said land. The foregoing sale is made for and in consideration of the sum of three thousand dollars, which the vendor declares and acknowledges to have received of, and from the purchaser, to whom the vendor gives full release and acquittance therefor.

Thus done in my office, the twentieth day of January, in the year eighteen hundred and twenty-seven, in presence of Nicholas Ibenloti and Nathan Mervain, witnesses, who have signed with the appearers, and me, the said Judge.

The said Jere Pritchard likewise sells and conveys to the said Shubal Tillotson, the undivided half, to Pritchard belonging, of all the stock of cattle and horses, and farming utensils on said land, being and thereunto attached, the consideration therefor is comprised in the three thousand dollars above mentioned. (Signed,) J. Pritchard, Shubal Tillotson, N. Mervain, N. Ibenloti. John Dutton, parish Judge.

A true copy of the original remaining in my office. Given and attested under my signature and public seal, this twenty-fifth day of December, in the year of our Lord one thousand eight hundred and twenty-seven.

JOHN DUTTON,
Parish Judge.

And afterwards, to wit: on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, the following order of Court was entered on record, to wit:

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Saturday, May 24th, 1828.

The Court met pursuant to adjournment.
Present, Hon. T. B. ROBERTSON.

JOHN MINOR,
vs.
TILLOTSON & PRITCHARD.

On motion of Levi Pierce and A. Heimer, Esqs. attorneys for defendants, it is ordered that James Allison, (p. dy. surveyor, U. S.) be authorized and requested to survey the tracts of land in controversy; to make an extended plan of the same, designating thereon all the boundaries of all the said tracts; also, how they interfere, and to run out and mark any lines, as well as natural and artificial objects, found on the premises, as either party may require; and to make return thereof on or before the first day of December term next.

And afterwards, to wit: on the twentieth day of August, in the year of our Lord one thousand eight hundred and twenty-eight, came the defendant, S. Tillotson, by his attorney, Levi Pierce, Esq. and filed the following supplemental answer, to wit:

S. TILLOTSON,
adsm.
JOHN MINOR.

The supplemental answer of S. Tillotson to the petition of John Minor:

The said Tillotson possesses and is the legal owner of two other tracts in the parish of Ascension and Iberville, by virtue of the annexed sales; one from Elizabeth Lee to Jesse Pritchard, of date October 18th, 1824, duly recorded 13th April, 1825, and by the said Pritchard transferred on the 20th January, 1827, being for six hundred and forty acres, situated in the parish of Iberville, and situated on Steep Gulley, and running back on the river; bounded on the west by lands there of J. Pritchard, and on the other side by vacant lands; and the other being a sale to respondent from Joel Varnoy, on 14th February, 1827, recorded in parish of Ascension, March 22d, 1827, of land situated on the New river; bounded by said river on the south, and on the west by Hiram Breand; on the south by vacant lands or land of P. Babin; on the east by Mr. Terrell, fronting and measuring between six and seven acres in a direct line on said river. And he shows that he has cultivated and possessed said tracts by virtue of said transfers and titles, and that the said Minor has never been in possession, nor has he title therefor; and submitting the whole case to a jury, that he may be dismissed with his costs, &c.

Documents annexed to the above supplemental answer, and referred to:

Know all men by these presents, that I, Elizabeth Lee, (widow of John Lee, deceased,) of the parish of Iberville, and State of Louisiana, for, and in consideration of eighty dollars to me in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, to J. Pritchard, of the parish and State aforesaid, all the right, title, interest, or demand, that I have by settlement since the year eighteen hundred and ten, to a certain tract or parcel of land, containing six hundred and forty acres, more or less, situated within the aforesaid parish, upon Steep Gulley, so called, and running back to New river; bounded on the west side by lands of the said Pritchard; and on the other side by vacant lands; to hold the same to the said Pritchard, his heirs and assigns, forever. In witness whereof, I have hereunto affixed my hand and seal, at Iberville, October 18th, 1824.

her
ELIZABETH ✕ LEE. [SEAL.]
mark

B. BABIN. BABIN, temoin, ANTOINE BABIN, AUGUSTE BABIN.

Filed the 13th day of April, 1825.

I certify the foregoing sale to be recorded in book K, No. 365, page 262, of the records of my office, this thirteenth day of April, in the year eighteen hundred and twenty-five.

(Signed) JOHN DUTTON,
Parish Judge.

I assign to Shubal Tillotson all my claims to the within mentioned settlement right, for the consideration of eighty dollars, to me paid, at Iberville, January 20th, 1827.

J. PRITCHARD.

In presence of
H. THUNTRY.

Before me,

JOHN DUTTON,
Parish Judge.

Know all men by these presents, that I, Joel Vannoy, in and for the consideration of two hundred and twenty dollars to me in hand paid, a receipt of which is hereby acknowledged, do, for myself and agent, also for my mother, and all parties concerned, being duly authorized, in presence of John Baker and Aaron Morris, bargain, sell, and convey, all our right and title to a certain tract of land settled by us in the year of one thousand eight hundred and eighteen, and on which premises we have resided ever since, located and situated on New river, partly in the parish of Iberville, and partly in the parish of Ascension, and bounded as follows, to wit: on the south by New river; on the west by a settlement of Hiram Brand; on the north by vacant lands, or lands of Pierre Babin; and on the east by Md'm Terrell, fronting and measuring between six and seven acres, in a direct line on the aforesaid river, as may be seen by the posts planted by Mr. B. Madison, surveyor, unto Shubal Tillotson, his heirs and assigns, forever, to whom we sell and deliver the aforesaid land and all improvements thereon, this, the fourteenth day of February, one thousand eight hundred and twenty-seven.

JOEL VANNOY.

In presence of
JOSEPH HALL, WES. BARKER, JOHN BARKER.

I certify that the foregoing instrument has been this day recorded in book No. 7, p. 272 and 273, resting in the archives of the parish of Ascension.
ASCENSION, *March the 22d*, 1827.

CARLIER DONTUNIER,
Judge and Not. Public.

And afterwards, to wit: on the eighteenth day of April, in the year of our Lord one thousand eight hundred and twenty-nine, the following order of court was entered on record, to wit:

Saturday, 18th April, 1829.

Special court.
Present, Hon. SAM'L H. HARPER.

JOHN MINOR,
vs.
TILLTOSON & PRITCHARD.

On motion of James Allison, ordered, that the defendants, or their counsel, show cause, on Monday, the 20th instant, at 10 o'clock, A. M. why they should

not pay him the amount of his bill for a survey of the premises in dispute in this case, made in obedience to an order of this court, of the 24th day of May last, and at the special instance of the said defendants, to wit: the sum of two hundred and twenty-five dollars.

And afterwards, to wit: on the twentieth day of April, in the year one thousand eight hundred and twenty-nine, the following order of court was entered on record, to wit:

Wednesday, 22d April, 1829.

Special court.
Present, the Hon. SAM'L H. HARPER.

2552.—JOHN MINOR,
vs.
TILLOTSON & PRITCHARD.

It is ordered that the rule taken in this case, on the 18th instant, on the defendants, or their counsel, to show cause why the bill of James Allison, for a survey made of the land in dispute in this case, amounting to the sum of two hundred and twenty-five dollars, should not be paid by them, be continued until Wednesday, the 22d instant, at 10 o'clock, A. M.

And afterwards, to wit: on the 22d day of April 1829, the following order of court was entered on record, to wit:

Wednesday, 22d April, 1829.

Special court.
Present, Hon. SAM'L H. HARPER.

JOHN MINOR,
vs.
TILLOTSON & PRITCHARD.

On motion of James Allison, and it appearing to the court that due notice has been given to the counsel of the defendants, of the rule taken in this case on the 20th instant, and no opposition being made to the same, and the court being satisfied on the justice of the claim of James Allison, to the amount of two hundred dollars, now order that the same be taxed in the costs in this case, and paid by the defendants, being the party at whose instance the survey of the premises in dispute was made.

And afterwards, to wit: on the sixth day of June, in the year of our Lord one thousand eight hundred and twenty-nine, the following entry was made, to wit:

Saturday, 6th June, 1829.

The court met pursuant to adjournment.
Present, Hon. SAM'L H. HARPER.

JOHN MINOR,
vs.
TILLOTSON & PRITCHARD.

On this day came the parties, by their attorneys, and thereupon came a jury, to wit: Thomas Toby, William Jaudon, J. B. Lamothe, J. B. Durelle, Samuel S. Relf, J. W. Welder, B. Bouan, E. L. Tracey, Mark Watton, Victor Jourdan, John Glaize, and Bazile Joubert, who were sworn, well and truly to try

the issue joined between the parties. "On the trial of the cause, it was admit-"ted by the plaintiff's counsel that the present action *is a peditory action*, or an "action for the ownership of the property, and that he has also prayed for dama-"ges;" when, after some progress, the court adjourned until four o'clock, P. M. at which hour the court again met. and the trial proceeded; when, after considerable progress made in the cause, the farther consideration of the same was adjourned over till Monday next, at nine o'clock A. M.; and afterwards, to wit: on the 8th day of June, 1829, the following entry was made, to wit:

Monday, 8th June, 1829.

The court met pursuant to adjournment.
Present, Hon. SAM'L H. HARPER.

JOHN MINOR,
vs.
TILLOTSON & PRITCHARD.

This cause came on again before the same jury originally empannelled therein; when, after some further progress in the cause, on motion of Levi Pierce, Esq. and it appearing to the court that Jesse Pritchard, one of the defendants, was not actually in possession of the premises in dispute at the time of the institution of this action, it is ordered that the *peditory action* be discontinued so far as regards said Pritchard; when, after hearing the evidence and arguments of counsel, the jury retired to consider of their verdict; and, soon after, returned the following verdict, to wit: "Verdict for the plaintiff. Thomas Toby, foreman."

And afterwards, to wit: on the ninth day of June, in the year of our Lord 1829, the following order of court was entered on record, to wit:

Tuesday, 9th June, 1829.

The court met pursuant to adjournment.
Present, Hon. SAM'L H. HARPER.

JOHN MINOR,
vs.
TILLOTSON & PRITCHARD.

On motion of Messrs. Heimer and Pierce, counsel for defendants, it is ordered that the plaintiff show cause, on Monday, the 15th instant, why a new trial should not be granted in this case, on the grounds that the verdict of the jury is manifestly contrary to law and evidence; because the admission of the papers objected to by the defendants, was contrary to law. And afterwards, to wit: on the 15th day of June, 1829, the following order was entered on record, to wit:

Monday, 15th June, 1829.

The court met pursuant to adjournment.
Present, Hon. SAM'L H. HARPER.

JOHN MINOR,
vs.
SHUBAL TILLOTSON.

Ordered, that the rule taken in this case, on the 9th instant, and returnable this day, be continued until to-morrow at 10 o'clock, A. M.

And afterwards, to wit: on the 16th day of June, 1829, the following entry was made, to wit:

Tuesday, 16th June, 1829.

The court met pursuant to adjournment.
Present, Hon. SAM'L H. HARPER.

Rule to show cause why a new trial should not be granted.

JOHN MINOR,
vs.
S. TILLOTSON.

The court having heard the arguments of counsel in this case, took time to consider.

And afterwards, to wit: on the twentieth day of June, 1829, the following order of court was entered on record, to wit:

Saturday, 20th June, 1829.

The court met pursuant to adjournment.
Present, Hon. SAM'L H. HARPER.

Motion for a new trial.

JOHN MINOR,
vs.
S. TILLOTSON.

The court having maturely considered this case, now order that the verdict of the jury, in this case, be set aside, and a new trial granted.

And afterwards, to wit: on the thirteenth day of January, in the year of our Lord 1830, the following order of court was entered on record, to wit:

Wednesday, 13th January, 1830.

The court met pursuant to adjournment
Present, Hon. SAM'L H. HARPER.

JOHN MINOR,
vs.
SHUBAL TILLOTSON.

On filing the affidavit of Isaac T. Preston, and giving the court to understand that material witnesses are absent, it is ordered that this cause be continued.

And afterwards, to wit: on the day and year last above written, the following order of court was entered on record, to wit:

JOHN MINOR,
vs.
SHUBAL TILLOTSON.

On motion of Isaac T. Preston, for plaintiff, and with consent of the defendant, it is ordered that the depositions of all witnesses in this case may be taken before a judge of the city court of New Orleans, or before the judges of any parish in the State, on the party requiring the deposition te be taken, giving the opposite party, or his agent, or attorney, reasonable notice of the time and place of taking the same.

And afterwards, to wit: on the twelfth day of February, 1830, the following entry was made, to wit:

Friday, 12*th February*, 1830.

The court met pursuant to adjournment.
Present, Hon. SAM'L H. HARPER.

JOHN MINOR,
vs.
SHUBAL TILLOTSON.

On this day came the parties, by their attorneys, and thereupon came a jury, to wit: H. Penett, Juan Castillianos, Wm. T. Thompson, John Goldenbow, Ant. Hebraid, D. Monroe, A. Rasch, James Pench, Wm. G. Hewes, Patrick Thompson, Victor David, and C. W. Goodrich, who were sworn well and truly to try the issue joined between the parties; when, after considerable progress in the cause, the further consideration thereof was adjourned until 4 o'clock, P. M. at which hour the court again met, and the trial proceeded; when, after considerable further progress in the cause, the further consideration thereof was adjourned until to-morrow at 10 o'clock, A. M.

And afterwards, to wit: on the 13th day of February, in the year of our Lord 1830, the following entry was made, to wit:

Saturday, 13*th February*, 1830.

The court met pursuant to adjournment.
Present, Hon. SAM'L H. HARPER.

JOHN MINOR,
vs.
SHUBAL TILLOTSON.

This cause came on again before the same jury originally empannelled therein, and the trial proceeded; when, after hearing the evidence in the cause, the further consideration thereof was postponed until Monday next at 10 o'clock, A. M.

And afterwards, to wit: on the 15th day of March, 1830, the following entry was made, to wit:

Monday, 15*th March*, 1830.

The court met pursuant to adjournment.
Present, Hon. SAM'L H. HARPER.

JOHN MINOR,
vs.
SHUBAL TILLOTSON.

This cause came on again before the same jury originally empannelled therein; and, after some progress in the cause, on motion of defendant, by his attorney, ordered that he have leave to discontinue his supplemental answer. The jury, after hearing the evidence and arguments of counsel, retired, under the charge of the court, to consider of their verdict; and soon after, returned the following verdict, to wit: "The jury find a verdict for the defendant. New Orleans, 15th March, 1830. Wm. G. Hewes, Foreman."

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Whereupon it is considered by the court, that the petition be dismissed, and that the plaintiff do pay the costs of this suit.

On the trial of this cause, the following documents and testimony was offered in evidence by the plaintiff, to wit:

I, Philip Grymes, register to the land office for the eastern district of the territory of Orleans, do certify, that upon the records now in my possession, of warrants or orders of survey, issued by the Spanish Government for lands lying within the boundaries of the late province of Louisiana, there is one registered as follows:

"Diez y ocho de Enero de mil seteciento ochenta y siete, A. Louis Leconte "viente arpanes de tierra de frente, con la profundidad ordinacia de quarenta en "el distrito de Galveztown."

Given under my hand, at the city of New Orleans, this 11th day of February, 1811.

(Signed) P. GRYMES,
R. E. D. of Or. Territory.

LAND OFFICE, EASTERN DISTRICT,
State of Louisiana.

Recorded in book D, No. 4, folio 305.

COLUMBUS LAWSON,
Register.

REGISTER'S OFFICE, NEW ORLEANS,
17*th February*, 1823.

I, Samuel H. Harper, register of the land office for the southeastern district of Louisiana, do hereby certify that the within described tract of land has been confirmed in the name of Mde. Louis Indice, by act of Congress, of the 11th May, 1820.

(Signed) SAM'L H. HARPER, *Register.*

Certificate of confirmation.

LAND OFFICE, EASTERN DISTRICT OF LA.
At New Orleans.

Reports of the register and receiver of public moneys of the eastern district of Louisiana, on land claims filed in the register's office, in pursuance of the act of Congress, passed on the 27th day of February, 1813, entitled "An act giving further time for registering claims to lands in the eastern and western districts of the territory of Orleans, now State of Louisiana.

1st class, species 2d, of incomplete French or Spanish grants or concessions, warrants or orders of survey, granted prior to the 20th December, 1803, 459. Madame Indice claims a tract of land situate in the district of Galveztown, containing twenty arpens front by forty arpens in depth, bounded on all sides by vacant lands. This tract of land is claimed by virtue of an incomplete title granted by the Spanish Government. We are of opinion that all the claims included under the 2d species of the 1st class, are already confirmed by the act of Congress of the 12th April, 1814.

(Signed) SAM'L H. HARPER. *Reg.*
(Signed) ALFRED LORAIN, *Rec'r.*

NEW ORLEANS, 20*th Nov.* 1816.

I certify the foregoing to be a true copy from the reports of the register of the land office and receiver of public moneys, dated the 20th November, 1816, as re-

corded in my office. In testimony whereof, I have hereunto affixed my signature, at the city of New Orleans, this 11th day of March, 1830.

HILARY B. CENAS,
Reg. East. Dist. Louisiana.

NUMBER OF ACRES OF LAND.

Names of persons subject to taxation.	Professions.	1st quality.	2d quality.	3d quality.	Town lots.	On what river situated.	Value of town lo's and other immoveable property.	Tax on town lots and other immoveable property.	Total of the taxes due by each person & subject to taxation.
V've Indice - -			560				800	1,40	1,40

I, John Dutton, parish judge in and for the parish of Iberville, do hereby certify the foregoing to be a true copy from the original remaining in my office, of the tax list, or assessment roll of taxable property, in the parish of Iberville, made for the year 1814, eighteen hundred and fourteen.

In witness whereof, I have hereunto set my hand and public seal, this 23d day of May, in the year 1829.

(Signed) JOHN DUTTON, [L. S.]
P. Judge.

Wo. Indice, -		560			800	2 16	2 16
Ve. Le Compte, -	Indice	800			1,600	2 55	2 55
Wo. Le Compte, -	Indice	800			1,500	2 38	2 38
Wo. Le Comte, -	Indice	800			1,500	2 31	2 31
Wo. Le Comte, -	Indice	800			1,500	2 31	2 31
							$11 71

I, Balthasar Dapny, sheriff of the parish of Iberville, do hereby certify the foregoing to be a true copy, from the original remaining in my office, of the tax list or assessment rolls of taxable property in the parish of Iberville, made for the years 1817, 1822, 1823, 1824, and 1825. In witness whereof, I have hereunto set my hand and seal, this 23d day of May, the year 1829.

(Signed) B. DAPNY, *Sheriff,*
Parish of Iberville.

I, John Dutton, parish judge in and for the parish of Iberville, do hereby certify, that Balthasar Dapny, sheriff of the parish of Iberville, made oath, this day, before me, that he has carefully compared the foregoing with the assessment rolls of taxable property in the parish of Iberville, and finds the same to be correct copies and extracts from the said assessment rolls, as above stated. In witness whereof, I have hereunto set my hand and public seal, this 23d day of May, in the year 1829.

(Signed,) JOHN DUTTON,
P. Judge.

Pardevant moi Phillip Carlier D'Outunier, juge de la paroisse de l'Ascension,

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dument autorisée á y exerces les functions de notatrè public est personnellement comparas Madame V've Louis Judish démemant en cette paroisse laqualles a déclarée par le presant acte vendre transferer et transporter au Sr. John Minor, ici represente par Monsieur Philip Minor, son fondé de pouvoirs un certain terre connus sous le nom de la prarie haute, contenant huit cent arpens, et demi de superficie conformemant au plan qui en a eté fait au mil vingt cent verge, par Walker Gilbert et á la concession de dix sept cent quatre vingt sept. La presente vente est faits pour le prix et somme de quinze cents piastres, payable dans le mois Janvier mil huit cent vingt cinq, et en consideration du payment de la dite somme de quinze cents piastres effectué comme el est dit ci dessus, la dite dame Ve. Louis Judish, se desaisit de son droit de proprieté sur la terre, ci dessus décrite pour nevette le Sr. John Minor, pour qu'il en jouisse lui et ses heirtiers, des á presant et pour toujours avec tous les droits et avantages y attachés la lui garantissant libre d'alienations remodisation & hypotheques generalemant quelconques se revisant sur icelle hypotheques speciales jusqu'a l'entre payment de son prix d'acheat. Et le Sr. Philip Minor, a accepté la presente vente, comme fondé de pouvoirs du Sr. John Minor avec les conditions y stipulees. Fait et passé a la paroisse de l'Ascension le.

Et out les parties contractantes signé au presant acte apres lecture a eux fait en presance des sieurs Fs. Ganan et Larogus Furgean, temoins domecilies et moi dit Juge. (Signé,) *V've Louis Judice*, *John Minor*, by his attorney, Philip Minor, *F. Garreau*, *Laroque Furgean*, *Carlier D'Ontrenier*, Juge & Not. Pub.

I certify the foregoing copy to be a true transcript from the original, of record in the archives of the parish of Ascension. In testimony whereof, I have signed it, and have hereunto affixed my seal of office, at the parish of Ascension, State of Louisiana, on the thirteenth day of May, A. D. one thousand eight hundred and twenty-nine, and fifty-third of the independence of the United States.

(Signed,) EDWARD DUFFEL,
Judge & Not. Public.

Received of John Minor, from his att'y, Philip Minor, the sum of fifteen hundred dollars for a tract of land containing eight hundred arpens, agreeable to the plot made by the act'g surveyor of the U. S., and in conformity to the bill of sale in the office of Judge Philip C. D'Ontrenier, for the parish of Ascension. 7th Feb'y, 1825.

$1,500 (Signed) Ve. LOUIS JUDICE.

Recorded on this 14th day of April, one thousand eight hundred and twenty-five, in this book, No. C, page 344, at the request of Philip Minor.

(Signed) CARLIER D'ONTRENIER,
Judge & Not. Pub.

I certify that the foregoing is a true copy of the original record in book No. C, fol. 344, of notarial acts in this office.

In witness whereof, I have signed it, and thereto affixed my seal of office, at the parish of Ascension, this nineteenth day of May, A. D. eighteen hundred and twenty-nine.

EDW'D DUFFEL,
Judge & Not. Public.

DEPOSITION.

District Court of the United States for the Eastern District of Louisiana.

JOHN MINOR,
vs.
SHUBAL TILLOTSON.

Robert Loyd, witness for the plaintiff in the above suit, sworn and examined

under the rule of court at this term, doth depose and say, that he surveyed the back lands of John Minor, in the rear of his sugar plantation, in the parish of Ascension, as a surveyor of the United States, and in pursuance of the orders of the Register of the Land Office at New Orleans: he thinks it was in August, 1824, but is not certain. There was at that time no settlement made on these back lands, and deponent saw no indications of the land ever having been surveyed. He crossed New river on the first forty arpens, and as nigh as he can judge, the size of that water course in the rear of the back lands, was about sixty feet from bank to bank; he has surveyed a good deal on the Mississippi river, and knows that there are bayous running out of the bends in the Mississippi river, generally, and some of them, to this deponent's knowledge, are larger than New river, in the rear of Minor; for example, the bayou in the bend six miles below Placquemine, on the right side, also, Manchack bayou. The surveyors have, invariably, surveyed the double concessions to the extent necessary to give the quantity without regard to the bayous running out of the bends of the Mississippi river. The boundary line between the parish of Iberville and Ascension, on the west side of the Mississippi river, strikes the river about two miles and a half above John Minor's plantation, at a small island, being the first island in the river above New Orleans.

(Signed) ROBERT LOYD.

Sworn to before me, this 21st Jannary, 1830.

(Signed) F. W. LEA, *Clerk.*

I have no cross examination, and agree that the deposition shall be considered as taken under the consent rule entered at this term. No objection to be made on account of being in the hand writing of counsel.

New Orleans, Jan. 21st, 1830. (Sig'd) A. HERMEN, *Att'y for Def'ts.*

On the trial of this cause, the defendant, Shubal Tillotson, offered in evidence the following documents, to wit:

Dn. Carlos Tradeau, agrimensor rl. y partr. de la provincia de la Louisiana.

Certifie que ha sido medio a favor de Baptista Allain, en terrino de ocho cientos arpenes quadra de superficia medidos con la percha de la ciudad de *Paris* de diez y ocho pies de ray de largo segun uso dicha colonia cuyo terreno situado en el distrito de Iberville, en el camino que via a Galveztown, a como una legua a el este del rio Misisipi, herdado de un lado a un terreno de Louis Leconte no apeado y a los demas lados con tierra vacantes y del dominio de S. M. fueran señelador para linderos los arboles señelados en el plano figurativo que antecede de a quel los limites es en paralelos diviguidos norte y sud con este y oeste sin etendera á la variacion y para a que courte doy la presente certificacion el virtud del decreto deser señora con del diez y ocho de mes de Marzo del año pasado de mil siete cientos ochenta y siete. Enero 8 de 1789.

CARLOS TRUDEAU, *Agr.*

Dn. Estevan Miro, coronel de los reales exercitos, gobernador intendente de la provincia de la Louisiana y Florida occidental, y inspector de y respectos, &c.

Vistas las antecedentes diligens, practicadas por el agrimensor de esta provincia Dn. Carlos Trudeau, sobre la posesion que ha dado a Bapta. Alin de la cantidad de ocho cientos arpanes de tierra quadrados, situatos en el distrito de Iberville sobre el camino que via a Galveztown, a como una legua al este del rio Misisipi lindado de un lado a un terreno de Luis Leconte una apeado, y á los demas lados con terrenos vacantes y del dominio de S. M. como lo denuestra el plano figurativo que antecede, y reconociendo estar lleglados el orden agrimensera y a la con cesion del ante dho. circunvecinos sin que a este se le cause pre-

alguno ne que lo; haya reclamado y si bien consentado seguin justificar su asistencia de dichos operacionas aprobandolas como las aprobadolas como las aprobanas. Viando de la facultad gl. el Rey nos tienes concedido otorgamos en su rl. nombre el sus o dho. Baupta. Alin, los referidos ocho cientos arpenes de tierra que quadrados para que disponga de ellos usufrute reglandose a los mencionados actigs. y observando los condicion, prevenedas en el reglemento del escrito. Damas el presente finado ac'arias mano y representado de año por el infra-escripto secretario por S. M. de esta Gobierno. En la Nueva Orleans a diez y sies de Enero de mil sete cientos ochenta y nueva findado, Estevan Miro. Por mdo. de su exe'a findado. *Andres Lopez Amento*, Resed'o.

En registre au livre coté A, No. 297, fo. 460 & 461, des reclamations des terres pour les comptes a Accadia et a Iberville, paroisse St. Jacques le vingt neuf Decembre, mil huit cent six et de l'Independance des Etats Unis d'Amerique la trente unieme année.

MICHAEL CANTREL, *Deputé.*

No. 297.—Etienne Commo claims a tract of land situate on the road leading to Galveztown, in the county of Iberville, containing eight hundred superficial arpens, and bounded on one side by land of Louis Lecomte, and on other sides by vacant lands. This land was surveyed by Don Carlos Tradeau, in the year 1789, in favor of Baptiste Allain, who obtained a complete grant for the same, in the same year, from Don Estevan Miro, the Governor, under which grant the claimant holds by virtue of regular sales. CONFIRMED.

I, Samuel H. Harper, Register of the Land Office for the eastern district of Louisiana, do hereby certify that the foregoing plat of survey and Spanish grant are true copies taken from book A, at pages 460 and 461, and now in my possession; and that the foregoing confirmation of said tract of land, is a true copy from the book of decisions made by the late board of commissioners for this district, entitled "Decisions, Acadia and Iberville, Galveztown and Point Coupeé," also in my possession. Given under my hand, at New Orleans, this 3d day of June, 1828.

(Signed) SAM'L H. HARPER, *Register.*

Translation.

No. 297.—I, Don Carlos Trudeau, royal and private surveyor of the province of Louisiana, certify that a tract of land, of eight hundred square arpens, has been measured on behalf of Baptiste Allain: the measurement thereof has been made, with the perch of the city of Paris, eighteen feet long, (*pieds de roi* French measure,) according to the custom of this colony. The aforesaid tract of land is situated in the district of Iberville, on the road which leads to Galveztown, about one league east of the river Mississippi, and bounds, on one side, by a tract of land not yet measured, belonging to Louis le Conte, and on all other sides, by lands yet undisposed of, and of the dominion of his Majesty. In the measurement of the aforesaid tract of land, the trees indicated on the foregoing survey were marked as limits thereof in the direction of north and south, with east and west, without attending to the variations of the needle. In testimony whereof, I have given the present certificate, in virtue of a decree of his honor, dated the eighth day of the month of March of the past year, one thousand seven hundred and eighty-seven.

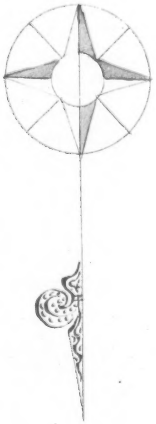
CARLOS TRUDEAU.

January 8th, 1789.

Don Estevan Miro, colonel of the royal armies, Governor of the province of

Louisiana 1789

Distrito D'yberville



trs.s Vacante

N. 44° Poniente

Bal.a Llain 240 Mp.s

S. 400 Perchas

luis le Conte no spreads

Roble

W 60, 1/2 S

Roble

Vacante

Lacciaia 1884

Vacante

linderos

N. 141 Ps

linderos

Oste 141. Ps

Bala Alaus 560 Arp.s

Este 141. Ps

Ter.o Vacante

p.s

141. Ps

Roble

S. 140. Ps

Copalmo

Blanco

Ter.o Vacante

Louisiana and West Florida, and inspector of the royal troops therein stationed, &c. having seen the above proceedings, made by Don Carlos Trudeau, surveyor of this province, on giving possession to Baptiste Allain, of the quantity of eight hundred square arpens of land, situated in the district of Iberville, on the road which leads to Galveztown, about one league east of the Mississippi; bordering, on one side, on a tract of land not yet measured, and belonging to Louis Leconte; and on all other sides, on lands not yet disposed of, and of the dominion of his Majesty, as appears from the preceding plan of said survey, and acknowledging the said proceedings to have been carried on according to the usages of surveying, and with the consent of the aforesaid proprietor of the neighboring tract, without causing any prejudice to the latter, and without having objected to it; which consent appears by his assisting at the said operations, approving of them as we approve of them.

In consequence of the premises, and in virtue of the power granted to us by the King, *we give*, in his royal name, to the aforesaid Baptiste Allain, the said eight hundred square arpens of land, that he may dispose of them, and use them, in pursuance, however, to the mentioned proceedings, and observing the conditions agreed upon in this transaction.

We give the present, signed by our hand, sealed with our coat of arms, and signed, likewise, by the undersigned Secretary of H. M. for this Government. New Orleans, January 16th, one thousand seven hundred and eighty-nine.

(Signed) ESTEVAN MIRO, for
M. DE SUSRIA.
ANDRES LOPEZ ARMESTO.

Recorded in the record of land claims for the counties of Acadia and Iberville, parish St. Jacques, the twenty-ninth of December, of the year one thousand eight hundred and six, of the independence of the United States of America the thirty-first.

(Signed) MICHAEL CANTRELLE, *Deputy*.

No. 279.—"Estevan Miro claims a tract of land situate on the road leading to Galveztown, in the county of Iberville, containing eight hundred superficial arpens, and bounded, on one side, by land of Louis le Conte, and on the other side, by vacant lands.

This land was surveyed by Don Carlos Trudeau, in the year 1789, in favor of Baptiste Allain, who obtained a complete grant for the same, in the same year, from Don Estevan Miro, the Governor, under which grant the claimant holds, by virtue of regular sales." "CONFIRMED."

I, Samuel H. Harper, register of the land office for the eastern district of Louisiana, do hereby certify that the foregoing confirmation is a true copy taken from a book of decisions made by the late board of commissioners for this district, entitled "Decisions, Acadia and Iberville, Galveztown and Point Coupée," in my possession.

Given under my hand, at New Orleans, this 3d June, 1828.

(Signed) SAM'L H. HARPER, *Register*.

The defendants also exhibited, as evidence, the following plot of survey, to wit:

Pursuant to an order from the United States' District Court of Louisiana, I have surveyed the claim of Tillotson and Pritchard, and so much of the conflicting claim of John Minor as was requested by either party, and which were

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necessary in order to make a connection with the surveys on the Mississippi. All of which are fully and correctly represented in the above map, in which the lines run by me are denoted by the red colors, and will be better understood by reference to the field notes hereunto subjoined. Returned February 2d, 1829.

(Signed) JAMES ALLISON, *Dep. Surveyor.*

I certify that the above plat is a true copy of the original deposited in this office.

(Signed) WILLIAM FULSOM,
Principal Deputy Surveyor.

Began January 5th, 1829, at the northwest corner of the claim of Tillotson and Pritchard, at a post near a large over cup oak tree, and 48 links to another over cup oak, bearing S. 6° W. near the High Prairie; thence with the line already established, So. 30° W. cross the prairie 30.50 chs. 33 chs. to low wet land; 41,50 chs. to cain and Brule; 50 chs. to wet land; 57 chs. to swamp; 69 50 chs. to cane; 87.50 to New river; 1.00 chs. wide; 116.36 chs. and stopped 46 links to the left of the corner post, 1.60 chs. to a live oak bearing N. 15° W.; thence, N. 89° 30 W. 20.37 chs. and ten links from the old corner post, 35 links to a cotton wood, about one foot in diameter, bearing S. 72 W. and 70 links, to a red oak about two feet diameter, bearing N. 79° W.; thence, So. 30° W. on the west side of Laurel Ridge, 10 chs. to low land, 14 chs. to cane, 25 chs. to Brule, 40.74 chs. 40 links to the right of the old corner post; thence, S. 89° 30′ E. 11 chs. to a pond, 2 chs. wide, 27.50 chs. to a pond, 3.50 wide, 42.50 to a pond, 3.50 wide, at 74 chs. left the Brule; 98 chs. to a small bayou 50 links wide, running a northeast course, at 114.36 chs. planted a post 25 links within the lines of Anderson and Henderson, and 37 links to a large gum, bearing N. 32° W. 20 links to a red oak, bearing N. 64° W. 12 links to a small holly, bearing S. 55° W. thence, N. 30° E. 40.74 chs. and planted a post 8 links to an ash bearing S. 60° E. 24 links to a red oak bearing N. 50° W.; thence, N. 89° 30′ W. 17 chains to a small bayou, 50 links wide, 26.50 chs. to the same, 39 chains to the same, at 78.57 chs. cornered; thence, returned to the place of begining, and run S. 89° 30′ E. 8.50 chs. to swamp, 17.50 chs. to the old corner post in the swamp, 75 links to a large cypress, bearing S. 5° E.; thence, S. 30° W. 10.00 chs. to high land, 40 chs. bayou 40 links wide. 52.52 to the same, 65 chs. to the same, 70.00 to New river, 20 links to the left of the entrance of a little bayou, 116.42 chs. to the intersection of the last line run, N. 89° 30′ W. 35 links to the east of the end, and planted a post, 25 links to a red oak bearing N. 38° W. 47 links to a gum bearing S. 18° E. where I completed the survey, containing six hundred and seventy-seven and 15-100 superficial acres, or eight hundred superficial arpens. having such shape, form, and marks, natural and artificial, as are represented in the above map. Thence to the northwest corner of the Madam Judice claim, and run S. 10° 05′, W. 29.48 chs. to a post; thence, S. 80° 50′, E. 20.67 chs. to Tillotson and Pritchard's line; thence, with their line, N. 30°, E. 25.96 chs. to the beginging corner; thence, to the southeast corner of the Madam Judice's claim, found on New river; thence, N. 10° 5′, E. 2.52 chs.; thence N. 80° 5′, 5 chs. to the upper line of Joel Venay's settlement, right running N.; thence, 40 links to the river, and following the meanders of the river down, run S. 67°, E. 7 chs. S. 70°, E. 4.50 chs. S. 87°, E. 2.83 chs. N. 30°, E. 10.09 chs. N. 16°, E. 2.23 chs. to the lower lines of said claim, running north; thence to the river Mississippi, and run on Mr. Minor's lower line, N. 33° 35′ E. 116.36 chs. and planted a post; thence, on the course last mentioned, 42 chs. to small bayou, 60 links wide at 73.50 chs. Intersected the southern boundary line of the claim of Tillotson and Pritchard, near the corner; thence, to the upper line of Mr. Minor's old tract, and run with said line N. 23° 35′, E. 116.36 chs.

and planted a post; thence, N. 67° 10' W. 15.70 chs. to the intersection of Tillotson and Prichard's western boundary line, on the fourteen arpens produced out for that purpose, 22 chs. from the corner. All of which being done, has, with former surveys, enabled me to make the above connected map, nothing more being required by either party. Completed January 24th, 1829.

(Signed) JAMES ALLISON, *D. Surveyor.*

DONALDSON, 19*th February*, 1829.

I certify that the above is a true copy of the field notes deposited in this office.

(Signed) WM. FULSOM, *P. D. Surveyor.*

And, on the trial of this cause, to wit: on the fifteenth day of March, 1830, the plaintiff, by his attorney, took the following bills of exceptions; which were allowed, signed, and filed, to wit:

DISTRICT COURT OF THE UNITED STATES—*Eastern District of Louisiana.*

JOHN MINOR,
vs.
SHUBAL TILLOTSON.

On the trial of this cause, the plaintiff having set up title to the premises in dispute, by virtue of a sale from Gen'l Wade Hampton, dated 5th of April, 1819, annexed to this bill of exceptions, and marked A, offered in evidence to the jury, the paper marked B, purporting to be a copy of the grant under which said Hampton claimed, and which copy had been duly presented, and registered by the land commissioners of this district, in the year 1806, having first proved that many of the ordinances of the Spanish Governors of Lousiana, had been deposited in the notarial office of Pedro Pedescloux, the notary who certified the said paper under his hand and notarial seal, and who is now dead; and, also, having first proved that the original grant was once in the possession of Gen'l Wade Hampton, but that he had, by his attorney, applied to said Wade Hampton for it, who gave a bundle of papers, saying they were all the titles to his Hormas lands, in his possession, but which bundle did not contain the original of the paper marked B; the plaintiff also offered in evidence the translation of said paper marked B, published by Congress, at pages 954, 955, and 956, of the land laws, &c. of the United States, published in the year 1828; these papers were objected to on the ground that they were not the best evidence, and that due diligence had not been used to procure the originals; and the court sustained the objections.

The plaintiff also offered in evidence, the original mortuary proceedings that took place under the Spanish Government, relative to the will, inventory, sale, and settlement, of the succession of Gilbert Antonio St. Maxant; from which mortuary proceedings the following extracts are truly made, and marked C; and, also, a copy of the proceedings, by Evan Jones, the commandant of the parish of Ascension, duly certified, and marked D, to show, by all the foregoing proceedings, that a complete title, by purchase, to the lands, of which the premises in dispute are a part, had been acquired by Dn. Louis Faure, under whom Wade Hampton claimed title.

The documents were objected to as evidence, on the ground that they did not show a complete title to said Faure; and the objection was sustained by the court.

The plaintiff, by his counsel, also offered in evidence the notice of the claim of Donaldson and Scott, under whom Wade Hampton claims title to the premises in dispute, presented to the commissioners of the United States for adjusting claims to lands in the eastern district of the State of Lousiana, appointed un-

der the act of Congress of the 6th March, 1805, which claim is numbered 133, and all the proceedings and documents, filed with said commissioners, and their decision thereupon, all of which documents, the paper marked E contains true copies, to show that the title of the Government to the lands of which the premises in dispute are a part, had been divested.

The evidence was objected to on the ground that it did not show that the title of the United States was divested as to the whole of the claim, and that the decision of the commissioners was not final as to the Government; and the court sustained the objection.

The plaintiff having set up title to part of the land in controversy, by purchase from the United States, offered in evidence the certificates of purchase, marked F and G, also, the receipts marked H, the survey marked J and K, the signatures of which were admitted; the said documents were objected to, as evidence, on the grounds that the sales and surveys, and certificates of purchase, did not divest the title of the United States to the lands, because no patent had been issued, and the lands were cultivable lands, bordering on New river, and because the said papers had not regularly issued from the land office, and are irregular on their face, and because the survey of said lands, made under the orders of the court, and given in evidenee by the plaintiff, and which forms a part of this bill of exceptions, shows these lands to border on New river. The plaintiff prayed the court to admit the documents in evidence, and leave to the decision of the jury, upon the testimony which should be produced, the question whether New river was such a water course as was contemplated by the act of Congress; but the court refused to permit the documents to be read in evidence, as well as all the other documents mentioned in this bill of exceptions; to all which opinions of the court the plaintiff, by his counsel, excepted, and prayed the court to sign this, his bill of exceptions; which is accordingly signed.

(Signed) SAM'L H. HARPER.

Copy of document marked A.

Before Michel de Armas, notary public in and for the city of New Orleans, State of Louisiana, United States of America, and in the presence of witnesses hereinafter named and undersigned, personally came and appeared General Wade Hampton, of the parish of Ascension, in the State aforesaid, who did declare and say, that, for and in consideration of the sum of two thousand four hundred dollars, to him in hand well and truly paid before signing these presents, by William Kermer, of this city, merchant, acting for and in the name of John Minor, of Natchez, the receipt whereof he, the said Wade Hampton, doth hereby acknowledge, and thereof, and from every part thereof, doth acquit, release, and discharge, the said John Minor, his heirs, executors, and administrators, and every of them, forever, by these presents; he, the said Wade Hampton, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said John Minor, here represented by his said agent, William Kermer, accepting for his said principal, his heirs and assigns, twelve hundred acres of land, to be laid off adjoining the back line, which shall be legally and finally established to his, the said John Minor's tract called Waterloo, and the two little places above, which, together, are supposed to be of six acres, and between the same and the Hormas grant; that is to say, between the front line of that portion of the Hormas grant which was formerly owned by Donaldson and Scott, and is now the property of the said Wade Hampton; the said twelve hundred acres to be laid off to the said John Minor the said width of the Waterloo tract, and of the two little places above mentioned, at the aforesaid division line, when the same shall be established, and extend back, by parallel lines, for complement, together with all and singular the right members and appurtenances thereunto belonging; to have and to hold the said twelve hundred acres of land, and all and singular other the premises hereby bargained and sold, or mentioned, or in-

tended so to be, with theirs and every of their rights, members and appurtenances, unto said John Minor, his heirs and assigns, to the only proper use of him, the said John Minor, his heirs and assigns, forever. And the said Wade Hampton, and his heirs, shall and will warrant, and forever defend, the premises aforesaid, unto the said John Minor, his heirs and assigns, against all and every person and persons whatsoever. It is, however, understood and agreed, expressly, between the contracting parties, that the said Wade Hampton, his heirs, executors, administrators, or assigns, shall, in no event, be liable nor subject to greater or higher damages under, or in consequence of the aforesaid general warranty, than the aforesaid sum of two thousand and four hundred dollars, with the interest which may accrue thereon, from the date of this sale, at the rate of six per cent. per annum.

According to the certificate of the recorder of mortgages of this city, bearing equal date herewith, there is no other mortgage registered against the vendor, on a plantation situate in the county of Acadia, but the one given before the judge of the parish of Ascension, on the 2d day of May, eighteen hundred and twelve, in favor of the representatives of the late Edward D. Turner, for securing a sum of sixty thousand dollars; the said mortgage, by act before Narcessus Broutin, notary public in this city, bearing date the 15th of July, eighteen hundred and thirteen, having been transferred by Antonie Peytevan, in the name and as surviving partner of the firm of Renaud & Peytevan, in favor of the Lousiana Bank, for securing sixteen thousand dollars out of the fifty-one thousand seventy-three dollars and nineteen cents, which the said Peytevan declared to be then due to his said firm by Wade Hampton and Daniel Clark, and for securing which, they had mortgaged a plantation called Hormas, and situated in the parish of Lafourche; which mortgages the said vendor binds himself to have raised as soon as possible, inasmuch as he declares that each of them has already been entirely satisfied and paid. Done and passed at New Orleans, at the office of the said notary, on the fifth day of the month of April, in the year of our Lord eighteen hundred and nineteen, and in the forty-third of the Independence of the United States of America, in the presence of Alphonse Robin and Benoit Peguon, witnesses to these presents, and the said appearers have hereunto set their hands, together with the said notary and witnesses. (Signed,) W. Hampton, Wm. Kermer, Bt. Pigon, A. Robin. Michel de Armas, not. public.

I do hereby certify the foregoing. New Orleans, January the twenty-sixth. eighteen hundred and twenty-eight.

(Signed) FELIX DE ARMAS,
Notary Public.

Copy of document B, referred to as making part of the foregoing bill of exceptions.

Concession.

Sor. Gobernador General, Dn. Mauricio Conway, vecino de esta inmediacion con el debido respeto á V. S. hago presente, que hallandome en los terminos de ir á establecerme por arriba sobre la tierra que juntamte. con Dn. Alexandro Satil, y con el agrado de V. S. hemos comprado de los Yndios Houmar, cuyo terríno se halla enteremento falto de cercas y desmontado á mas de una legua en el fondo, demodo que la cipriera distará de como una legua y media del rio Sin tener yo derecho á ella por no habersenos concedido V. S. mas de los cuarenta arpanes del fondo ordinario, con cuya cortedad no puedo alcanzar los Cipres necesarios á la formacion de mis barreras y demas utilidades de una habitacion, por tanto. A V. S. rendidamte. suplico, se digne en esta atencion concederme

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todo el fondo que hubiere vacante, tras ó al cabo de los sus o dichos cuarenta arpanes de fondo por pertenecerme ahora en totalidad la mencionada tierra, mediante la venta y cecion que por del ante del escribano Dn. Andrés Almonaster á cuatro de Enero del corrte. año se me ha hecho de la porcion ó mitad que correspondia al prescitado Mr. Satil suplicando asi mismo V. S. se sirra comisionar á Dn. Luis Andry á que venga á darme posecion del expresado frente y fondo, poniendo los correspondientes linderos y dandome testimonio del todo para mi govierno y resguardo por cuya gracia viviré para siempre reconocido. Nueva Orleans, nueve de Septiembre, de mil setecientos setenta y seis.

MAURICIO CONWAY.

Decreto.

Nueva Orleans, veinte y siete de Setiembre, de mil setecientos setente y seis, el segundo ayudante de esta plaza Capitan Dn. Luis Andry pasará á la tierra que expresa este memorial y dará posecion al suplicante de la que hubiere vacante despues de los cuarenta arpanes de profundidad que posée siguiendo la misma direccion de estos estando vacantes, y no perjuiciando á los circunvecinos para lo que le señalará términos y linderos, estendiendo á continuacion las diligencias que practicáre firmandolas con los susodichos, y me las traerá para proveerlo de su título en forma. UNZAGA.

Certifizacion.

Dn. Luis Andry, capitan de infanteria y segundo ayudante mayor de la plaza de la Nueva Orleans, comisionado por su Señoria el Sor. Gobernador General de esta provincia de la Louisiana, á fines del antecedente memorial y decreto. Certifico haber pasado hoy dia nueve del mes de Octubre del corrte. año de mil setecientos setenta y seis, á la tierra de que se trata en los anteriores documentos cituada en el distrito de la parroquia de la Asencion ó de la Fourche sobre la margen izquierda de este rio Misisipi, como á veinte y dos leguas por arriba de esta referido capital, acompañado del pretendiente Dn. Mauricio Conway, y del comandante del mencionado distrito Dn. Luis Judice, á quien insté por inteligente gl. es en el idioma de los Yndios Houmas y Bayagoulas á que se serviera llamar al gefe de ellos nombrado Calabe vendedor del en presado terreno para que me enseñase los términos gl. le han de limitar por arriba y por abajo, lo que habiendose executado así y habiendo concurrido el citado gefe, me respondio por medio del enunciado interprete y commandante, extenderse el terreno venuido por él y anteriormte. ocupado por los Yndios desde el limite inferior de Francisco Duhan por arriba, hasta el de Miguel Chiarron por abajo, aunque no concuerden actualmte. estos apellidos con los que se hallan asentados en el instrumento de venta por haber varias veces desde la citada epoca mudado de poseedor las insinuadas estancias; cuyo intermedio medé luego, tirando á este efecto por el monte las lineas precisas para cerciorarme de su extension; cuyas lineas se hallan figuradas en el plano ó bosquejo de mis operaciones que entregué al referido pretendiente, y hallé que cabe noventa y seis arpanes de frente al rio, ensanchandose de ciento y veinte grados hacia ser fondo por su situacion en el recover de la encenada dirijiendose la linea de arriba limitrofa con Francisco Duhan, á cincuenta grados del norte acia el este: evacuado el medimiento del antedicho frente procedé en poner al pretendiente en posecion de la profundidad gl. por el antecedente decreto seleotorga; á cuyo efecto habiendome restituido á la linea de arriba, que colinda con el predicho Francisco Duhan, reconocé en su presencia los términos clavados por mé el dia 22 de Diciembre, de 1773, los cuales aun existen en la misma situacion distancia y direccion ambos de palo moral, el primero de cinco pies y ocho pulgadas de largo, y de sies y media sobre siéte pulgadas de cuadradura punteagudo de siete pulgadas por su cabesa y con culata bruta, puesta de dos pies y medio en tierra, á treinta y siete toesas y dos pies de distancia de la margen actual del rio; y el segundo de

seis pies y cuatro pulgadas de largo y de seis sobre siete pulgadas de grueso, con punta, culata, y plantacion igual a las del primero, á un arpan ó treinta toesas mas por atras acia el fondo, despues seguí á la misma linea y en el enunciado rumbo de cincuenta grados del norte acia el oeste hasta los cuarenta arpanes de profundura abriendome á dicho, efecto un caminito por el monte á cuyo punto hice clavar un lindero de cipre de seis pies de largo y de seis pulgadas de grueso en cuadro punteagudo de ocho pulgadas por arriba y con culata bruta enterrada de dos pies y medio, y á dos arpanes mas lejos todavia; esto es á cuarenta y dos arpanes del rio; puse otro termino igual en todas sus circunstancias á el que se acabe de tratar. Finilizada esta linea llegué á la de abajo limitrofa con Miguel Chiarron á quien igualmte. llamé y procediendo el medimiento de los siete arpanes gl. pr. decreto del 27 de Setiembre, de este mismo año se le ha concedido el expresado Gobernador hice clavar en ella dos terminos de palo de moral, el primero de cuatro pies y diez pulgadas de largo, y de como cinco pulgadas y media de grueso en cuadro mal cuadrado, punteagudo de ocho pulgadas por su cabera y plantado de veinte pulgadas en tierra, á veinte toesas de distancia de la margen del rio en la actualidad, y el segundo de cuatro pies y ocho pulgadas de largo, y de cinco pulgadas de cuadradura mal cuadrado tambien con punta de siete pulgados y clavado tambien del susodicho fondo de veinte pulgadas en tierra á otras viente toesas mas por el fondo: despues de que proseque por el monte (y en la referida direccion de setenta grados del norte acia al este,) á la misma linea hasta los cuarenta arpanes de profondura; á cuyo punto hice plantar un termino de cipre de seis pies de largo y de siete pulgadas de grueso en cuadro con punta de diez pulgadas y culata bruta clavada de dos pies y medio de profundidad en tierra; y ó dos otros arpanes mas lejos todavia esto es á cuarenta y dos arpanes del rio hice poner otro lindero del mismo tamaño é igual en todas sus circunstancias al antecedente para no desviar el rumbo.

Y para que de todo lo antes expresado conste doy la presente certificacion que he firmado yo con el expresado interezado Dn. Mauricio Conway, y con el mencionado comandante é interprete en el asunto Dn. Luis Judice, habiendo declarado el gefe Yndio Calabe y los dos colindantes Francisco Duhan, y Miguel Chiarron, no saber firmar de todo lo que doy fé en la referida costa ó districto fecha, ut supra. Maurice Conway, Luis Andry, Luis Judice.

Dn. Bernardo de Galvez, coronel del batallon de infanteria de la Louisiana, Gobernador, intendente é inspector general interino de ella, &ca. Vistas las antecedentes diligencias practicadas por el segundo ayudante de esta plaza Capitan Dn. Luis Andry, sobre la posecion q'l. ha dado á Dn. Mauricio Conway, en virtud del decreto antecedente de mi antecesor de toda la tierra vacante detras ó á la espalda de los quarenta primeros que posée sobre noventa y seis arpanes de frente al rio siguiendo la misma direccion que estos, y reconociendo estar regladas en orden de agremensura, y á las concesiones de los circunvicinos sin que á estos se los cause perjuicio alguno, ni que lo hayan reclamado, y si bien consentido segun justifico su asistencia á dichas operaciones, aprovandolas como las aprovamos. Usando de la facultad que el Rey tiene concedida, otorgamos en su real nombre al referido Dn. Mauricio Conway la citada tierra detras, ó alcaso de los cuarenta arpanes que contiene su habitacion en el distrito de la *de la* Fourche sobre noventa y seis de frente al rio siguiendo la misma direccion que corren aquellos para que como propios disponga de ellos y los usufrute arreglandose á las mencionadas diligencias y observando las condiciones prescripta en el reglamto. del asunto. Darnos la presente firmada de nuestro puño sellada con el sello de nuestras armas y refrendada del infraescripto secretario de este Gobierno En la Nueva Orleans á veinte y uno de Junio de mil ceterientos setenta y siete. Bernardo de Galvez, (lugar del sello.) Por mando. de su Señia. Joseph Foucher.

Es conforme á su original que corregé y concerté y devolvé á la parte, y á su pedimto. doy el presente en la ciudad de la Nueva Orleans, á doce de Junio de mil ochocientos y cinco y el vigesimo nono de la independencia de los stados Unidos de America. Pedro Pedesclaux, Notario.

Sor. Yntendente General, Dn. José Zamora, con le debido respecto expone á v. que teniendo encargo de Dn. Luis Feaure, cirujano mayor de la plaza de Baton Rouge, para ql. le remita una copia del remate ql. se ha celebrado de los tierras de otumá por ser propietario de ellas en virtud de la adjudicacion que en el se hiro; y como para poderlo verificar es necesario ql. Dn. Carlos Xemines, escribano publico le expida dcho. Documento por hallarse los originales en el oficio de su cargo. A. V. suplica se sirva mandar se le despache y es gracia ql. recibirá de la justificacion de vme. Nueva Orleans, 13 de Novre. de 1798. José Zamora, como lo pide, Proveyólo el Sor. Licenciado Dn. Manuel Serrano, acesor gral. de la Yntendencia é intendente gral. interino de esta provincia de la Louisiana, por S. M. ql. lo rubrico en la Nueva Orleans à catorce de Noviembre de mil setecientos noventa y ocho años. Carlos Ximenes.

No. 9.—En dicho dia mes y año yo el escribano notifiqué el decreto siguiente á Dn. Joseph Zamora en supersona, doy fé. Ximenes. En la ciudad de la Nueva Orleans, á tres de Diciembre de mil setecientos noventa y ocho, yo Dn. Pedro Derbigny, interprete publico y nombrado en esta causa hice la traducion de las diligencias ql. anteceden, en los términos siguientes. En la Fourche de Chetimachas, parroquia de la Asencion, provincia de la Louisiana, hoy doce del mes de Agosto del año de mil setecientos noventa y ocho, Nos Dn. Evan Jones, capitan del regimto. de milicis provinciales de infanteria, de los Alemanes y comandante del ante dicho distrito, para el cumplimto. y execucion del decreto antecedente, nos transportemos á la puerta principal de la Yglesia de la dicha parroquia donde, al salir de la Santa Misa, hallandose juntado un numero crecido de vecinos y otros individuos hemos hecho publicar y pregonar con alta é inteligible voz, por Juan Bautista Cazebon, pregonero ordinario, que incontenente ibamos á proceder á la venta y remate final, al mayor postor, de la mencionada tierra, cituada en el parage llamado Houmar, perteneciente á la sucecion del difunto Sor. Coronel Dn. Antonio Gilberto de San Maxent teniendo veinte y nueve arpanes de fronte con *la profundidad que pueda hallarse*, abriendose de como treínta y seis grados, lindando por arriba á la tierra de Francisco Duhon, y por abajo á la de Patricio Conway, con la condicion de que el rematatador ó comprador tendrá que pagar de contado el precio del remate, y conforme á esto habiendose pregonado con alta voz dicha tierra, y toda persona éncitada á prejar, la puso primero Dn. Joseph Landry, á la cantidad de mil y cien peros fuertes, despues Dn. Raimundo Brand á mil ciento y cincuenta peros, Dn. Joseph Landry á mil doscientos peros, Dn. Raimundo Brand á mil y trescientos peros, Dn. Pablo Landry á mil y cuatro cientos peros, Dn. Raimundo Brand á mil y quinientos peros, Dn. Joseph Landry á mil quinientos cincuenta peros, Dn. Raimundo Brand á mil seiscientos peros, Dn. Joseph Landry á mil seiscientos veinte y cinco peros, y Dn. Luis Faure, á mil seiscientos y cincuenta peros y despues de varios pregones y de haber aguardado mas de dos horas sin que se haya presentado nadie para pujar mas, hemos rematado y rematamos final y definitivamte. la dicha tierra con todas y cualesquiera sus pertenencias y ventajas asi como ahora está al antedicho Dn. Luis Faure y á sus herederos para siempre, por la expresada cantidad de mil seiscientos cincuenta peros, que nos ha pagado de contado y el dicho Luis Faure, que se haya presente habiendo aceptado y aprovado la dicha adjudicacion á su favor de que se ha dado por satisfecho y contento por haber visto y visitado la dicha tierra, hemos cerrado y cerraneos el presente remáte, y firmó el memorado Dn. Luis Faure la presente escritura en presencia de los Sres. Joseph Bujeaud, Pedro Arrieux, Joseph Camer, y Raimundo Brand, testigos (tutigos) de asistencia requeridos que han firmado con nos en el dicho dia mes y año. Luis Faure, Joseph Bujeaud, Pedro Arrieux, Joseph Comer. Raymundo Brand, y nos comandante Evan Jones. Cuya traducion expresó dicho interprete haber hecho bien fielmente segun su leal saber y entender y la firmó ante mi el escribano de que doy fé. Pedro Derbigny. Ante mí, Carlos Ximenes. Es copia del remate traducido del idioma Francés al Español cele-

brado á favor de Dn. Luis Faure, de las tierras nombradas Houmar, correspondientes á las sucesiones del difunto Sor. Coronel Dn. Gilberto Antonio de San Maxent en la Fouche ante su comandante Dn. Evan Jones, que se halla colocado á foxas trescientas noventa y una á trescientas noventa y cuatro de los antos sobre la venta de bienes de dicha sucesion, á que me remito, y cumpliendo lo mandado. doy la presente en la Nueva Orleans á catorce de Diciembre de mil seteci entos noventa y ocho. Carlos Ximenes. Stephen de Quiñones, notario público de ésta ciudad y territorio de Orleans por los Estados Unidos de America. Certifico en la mejor forma ql. puedo y debo: que en los autos de la mortuoria del difunto Sr. Coronel de milicias Dn. Gilberto Antonio de St. Maxent, en la plaza principal No. 1, folio doce se halla una clausula de su testamto. testimoinado que es la decima tercia del tenor siguiente: 13a. "Dedaro para lo que "pueda importar, tener entre mis bienes una habitacion en el parage nombrado "Humar como á diez y ocho leguas de esta dicha. Ciudad, la ql. compré en "seis mil peros de Dn. Mauricio Conway, habra siete años por escritura en "uno de los oficios de esta ciudad, con diez y ocho arpanes de frente, y con mas "de cuatro leguas de profundidad." En el incidente No. 2, de la mortuoria de dcho. Sr. de St. Maxent sobre la venta de sus bienes á fojas trescientas setenta y ocho, se halla el anto del tenor siguiente estractado. "Y en cuanto á las "tierras de Humas, librese el despacho que se pide incertandose el contenido "del escrito antecedente para que nombrando los peritos que acepten y juven, "tásen las tierras y las venda al contado, excediendo de los dos tercios, remiti-"endo su importe en primera ocasion segura. Juan Ventura Morales, Ldo. "Manuel Serrano."

A fojas trescientas setenta y ocho vuelta del mismo incidente, se halla la siguiente representacion hecha por Dn. Evan Jones, comandante que fué de la parroquia de la Fourche, al Sr. intendente de Real Haceenda. "Hallandome "en camino pa. esta ciudad, recibí el despacho antecedente, el que no he podi-"do ejecutar por la razon expuesta, y necesitandose segun me hago cargo de que "la estimacion de las tierras de los Humas, se ejecute con la mayor anticipacion, "lo ql. no podrá verificarse hasta mi regreso á mi destino; hago presente á vmd. "que en ésta ciudad se hallan dos sugetos, y son Dn. Simon Ducourneau, y "Dn. Alejo Lessasier que tienen bastante conocimiento de la calidad y circun-"stancias de la dcha. tierra; por lo ql. podrá vmd. si lo tiene á bien mandar se "estime por las susodichos. Nueva Orleans, primero de Agosto de mil seteci-"entos noventa y ocho. Evan Jones." Que seguidmte. hay el decreto siguiente, Nueva Orleans, tres de Agosto de mil setecientos noventa y ocho: con atencion á lo ql. produce la diligencia antecedente, procedase al avaluo de las tierras Houmas, por Dn. Simon Ducourneau y Dn. Alejo Lessasier aceptando y jurando antes. Morales, Ldo. Serrano, ante mi, Carlos Ximenes. En el mismo incidente y á fojas trescientas y ochenta buelta se halla la estimacion siguiente: *Estim'n.* En la ciudad de Nueva Orleans, en dicho dia mes y año ante mi el escribano, parecieron Dn. Alejo Lessasier y Dn. Simon Ducourneau apreciadore, nombrados en estas diligencias y enterados del decreto precedente, como tambien del auto contenido en el despacho anterior proveido en once de Julio, ultimo dijeron: que en atencion á tenor conocimto. inteligencia é instruccion de las tierras Humas pertenecientes á la sucesion del sor. difunto coronel Dn. Gilberto Antonio de San Maxent, distantes de ésta capital como veinte y cuatro leguas, hecho cargo de que la dotacion de estas tierras se compone como de veinte y nueve arpanes de frente, con mas de cuatro leguas de profundidad, las tasaban y desde luego tasan, despues de haber consultadose entre sé, y acordadose en la cantidad de dos mil y cuatro cientos pesos, con atencion á ser una tierra despoblada de el dia, sin edificios ni cosa de provecho sobre ella; cuyo precio es el que le dan por ser el que consideran valer, y no mas; y firmáron de que yo el escribano doy fé. A. Lessasier, S. Ducournean. Ante mí, Carlos Ximenes. Y seguidamte. hay este decreto. El presente escribano pasará á la casa del

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impresor y manifestandole la tasacion precedente de las tierras de Humas, har a coloque noticia de ellas en el periodico, eunciando que su venta se hará el trece del comte. á las cuatro de la tarde en esta intendencia. Morales. Ldo. Serranos Al folio trescientos ochenta y dos hay la siguiente notaque pasé noticia al impresor segun se manda para ql. la induyese en el periodica. Doy fé, Ximenes.

Aviso. Aqui se coloca el aviso estractado (del impresor Dn. Juan Bta. Fontaine,) del periodicio No. 41, publicado el nueve de Agosto de mil setecientos noventa y ocho, y es el siguiente: "A vendre. une terre de vingt neuf ar- "panes de face sur environ quatre lieux de profondeur, située á vingt quatre "lieux de la Nouvelle Orleans, du meme bord. dans l'endroit vulguairement ap- "pelle Houmas, appartenante á la sucesion de feu Mr. de St. Maxent, estimée "en l'invantaire deux mil quatre cents piastres; será adjugée definitivement le "treize du courrant á quatre heures de l'aprés midy á l'intendance, au plus of- "frent et dernier en cherisseur." Al folio trescientos ochenta y dos buelta se halla el decreto siguiente. Nueva Orleans, 6 de Agosto de mil setecientos noventa y ocho. Respecto á que el decreto antecedente de be cumplirse despues de que Dn. Evan Jones, comandante de la Fourche no hubiese podido vender las tierras; librese despacho con incursion de la tasacion y esta providencia para que proceda á la dicha venta al contado, siempre que exeda de los dos tercios del valor dado, no habiendo quien ofresca mas; pague la cantidad que se debe por la construcion del malecon poniendo recibo á continuacion de las diligencias, y remitiendo esta con el resto á este tribunal, dando razon antes del dia treze del corriente con atencion á lo ya decretado en el particular. Juan Ventura Morales, Ldo. Serrano. Ante mi, Carlos Ximenes. Al folio trescientos ochenta y seis buelta se halla en el idioma Francés el documento que sigue. A la Fourche de *Adjudm.* Chetimachas paroísse de l'Assencion et paroisse de la Louisiane, aujourd'huy douze du mois d'Août de l'annee mil sept cents quatre vingt dix huit nous Dn. Evan Jones du regiment de milices provinciales d'infanterie des Alemands et commandant du district susdit, afen de remplir et executer le decret precedent, nous sommes transporté á la porte principale de l'Église, de la susditte parroisse ou á la sortie de la sainte messe un nombre considerable d'habitants et autres ètant assemblés, nous avons fait publier et proclamer á haute voix par Jean Bte. Cazelon ericur ordinaire que nous allions tout presentement proceder á la vente et adjudication finale au plus haut et dernier encherésseur de la susditte terra située aux Houmas appartenante á la succession du defunt Colonel Dn. Antonio Gilberto de St. Maxent, contenant vingt neuf arpens de face sur la profondeur qui pourroit s'y trover, ouvrant d'environs trante-six degrées atenant par en haut á la terre de Francois Duhan, et par en bas á celle de Patrice Conway, á condition que l'adjudicataire ou acquereur sera tenu de payer le prix de l'adjudication au comptant; et làdessus la dite terre ayant eté crice et proclamé á haute voix, et toute personne invitée á mettre á l'enchère; elle fut mise d'abord par le Sieur Joseph Landry á la somme d'onze cents piastres gourdes; en suite par le Sieur Raymond Brand á onze cents cinquante piàstres; parle le Sieur Joseph Landry, á douze cents piastres; par le Sieur Raymond Brand, á treize cents piastres; par le Sieur Paul Landrey, á quatoree cents piastres; par le Sieur Raymond Brand, á quince cents; par le Sieur Joseph Landry, á quience cents cinquante piastres; par le Sieur Raymond Brand, á seize cents piastres; par le Sieur Joseph Landry, á seize cents vingt cinq piastres; et par le Sieur Louis Faure, á la somme de mil six cents cinquante piastres, et apres plusiers oriees et avoir atendu plus de deux heures sans qu'il se soit presenté personne pour augmenter ou couvrir la dite enchère, nous avons adjugé et adjugeons finalement et definitivement la dite terre avet toutes set circonstances et avantages quelleconque telle qu'elle se trouve actuellement au sus dit Louis Faure et á ses heritiers pour toujours pour la susdite somme de mil six cents cinquante piastres qu'il nous á compté et payé comptant, et le dit Sieur Louis Faure etant present et ayant acepté et approuvé la dite adjudication en sa faveur dont il s'est de-

clarée satisfait et content pour avoir ou et visité la susdite terre, nous avons arreté et arretons la presente adjudication, et le susdit Louis Faure, á signé le present acte en presence de Sieur Joseph Bujeaud, Pierre Chieux, Joseph Cemes, et Raymond Brand, temoins d'assistance requis qui ont signé avec nous le jour, mois et an comme ci-dessus. Louis Faure, Joseph Bujeaud, Pierre Chieux, Joseph Cemes. Reymond Brand, et nous commandant Evan Jones. Al folio dos cientos setenta y seis, se halla la representacion y decreto siguiente: Don Pedro Marigny, caballero de la orden de Sn. Louis, Susdicho de los acreedores del difunto Sr. Corl. Dn. Gilberto de San Maxent, en los autos de la testamentaria de dicho sor. y lo demás como mejor proceda de dere.ho digo; ql. se me ha dado traslado de un oficio dirijido á v. por Dn. Miguel Cantrelle, comandante del puerto de Cabaanoce en ésta provincia por el cual participá á v. que la habitacion de ésta sucesion situada en el puerto de la Fourche, y llamada comunmente de Humas, no ha sido pujado á añas de mil y quinientos peros sinembargo de haber la hecho pregonar en diferentes Domingos, y ql. le parece será conveniente se suspenda su venta hasta el mes de Agosto proximo, continuando sus pregones y embiando cedulones á todos los puerto para la inteligencia de aquellos moradores, salvando el mejor dictamen de v. y contestandolo con vista de los autos de la mortuoria de dicho difunto expongo; que con secuente á la clausula decima tercia del testame.to de dcho. sor. que corre á fojas doce, declaró que dcha. habitacion estaba situada en el parage nombrado Humàs, como á diez y ocho leguarde ésta ciudad, que hubo por seis mil pesos de Dn. Mauricio Conway por escritura en uno de los archivos de esta dcha. ciudad compuesta de diez y ocho arpanes de frente, y con mas de cuatro leguas profundidad; cuya habitacion se estimo por tres peritos á fojas ochenta y ocho de estos mismos autos en la cantidad de cuatro mil y quinientos pesos; y enatencion á que la postura que se hizo de ella no es mas que la mitad de los dos tercios en que á lo menos debe rematarse, y que tal vez aquellos habitantes ignorando el fondo que tierre dcha. habitacion no habran hecho las pujas necesarias por el mas valor que debe tener: se servira vmd. mandar que con insercion de ésta representacion, y la providencia que á ella recayere se libre despacho en forma al relacionado Dn. Miguel Cantrelle, afin de que haciendola pregonar hasta el mes de Agosto, remitiendo cedulones á los puertos inmediato admitiendo las posturas que se hicieren que firmaran á continuacion los postoras y enlerando á todos de la profundidad que tierre dcha. habitacion, les proponga se adjudicará por et todo ó por partes como mas conveniente les fuere; cuyas posturas evacuadas en dicho mes de Agosto, las remitirá á éste tribunal para que en su vista se sirva determinar la adjudícacion ql. deba hacerse, segun las mismas, a los plasos, y con las seguridades que deban dar los remitadores con fianzas idoneas, por tanto: A v. suplico se sirva proveer y mandar hacer como pido con justicia costas, y juro, &c. Pedro Marigny.

Decreto. Como lo pide, hay dos rúbricas, certificio que las copias, como las estructadas anteriores, son conformes á sus originales ya citados, que á efecto de sacar la presente me manifestó Mr. Bourgois, secretario del consejo de esta ciudad á quien los devolvé corregidos y concertadas y á ellos me refiero como tambien el avso inserto estractado del libro impreso que me manifestó Dn. Juan Bautista Fontaire, que corregido y concertado, lo conservó en su poder, y á èl me refiero, y á pedimento de Dn. Daniel Clark, doy la presente en ésta ciudad de la Nueva Orleans, ó catorce de Octubre, de mil ochocientos y ocho años, y el trigésimo tercio de la independencia Americana que firmé y sellé con el sello de mi oficio, enmendado, capital, entre, renglones, metre, par, todo vale. Stephen de Quiñones, Noto. Pùblico.

Copy of document marked D, referred to in the foregoing bill of exceptions.

A Lafourche de Chitimachas, paroisse de l'Ascension et province de la Louisiane, aujourd'hui cinq du moi de Novembre, de l'année mil sept cent quatre

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vingt dix sept et a onze heure du matin a l'instance du Messrs. Pierre Marigny et Jacques Carrick, syndic pour les creanciers de la succession de feu Colonel Dn. Gilbert Antonio de St. Maxent, jr. commandant soussigné en presence des temoins, ci-apres nommés me suis transporté à la porte principale de l'Eglise de la paroisse susdite a fin de mettre à l'adjudication au rabois l'entreprise de faire une levée neuve, un fosse de transpiration ses ecoulemens necessaires et un chemin en neuf sur la terre aux Houmas, appartenante a la succession susdite contenant de vingt neuf ou trente arpens de face plus ou moins de la manière suivante, c'est a dire, que l'entrepreneur ou adjudicataire sera obligé de faire un levée neuve sur la dite terre a la distance de trois quarts d'un arpent au moins du fleuve dans l'endroit le plus proche a commencer a la borne al Francois Dubou par en haut a finir a celle de Mr. Patric Coneway par en bas de douze pieds et a base trois pieds a dernier de ham et de quatre pieds de créte la banquette du coté du fleuve sera a une toise de large du pied de la levée a la distance en dedans au pied de la levée au fossé de transpiration sera de huit pied, en monter au chemin de vingt cinq pieds le dit fossé de transpiration sera d'un pied, a dernier de crues et de deux pieds de large au ham, et sera conduit dans quelqu'unes de bas fond que la levée trouvera ou bien si il ne se trouve pas de pareil bas fond assez breux pour egouter les eaux de transpiration l'entrepreneur sera tenude faire un au plusieurs ecoulemens dans la profondeur pour egouter les dites eaux de transpiration le tout sera bien et loyalement finis a sujer a la visite et aprobation du sindic, du quartier et du comm'dt du district, aucun arbre ni souche longue ni restera dans la levée, et seulement il sera permis a l'intrepreneur de laisser de tous les plus gros arbre entre la levée et la fosse de transpiration et dans le chemin, en égrendissé dans ces endroits le chemin a proportion et d'un maniere convenable, tous les autres arbres seran coupée a rais de chaussée moyennant quoi le dit entrepreneur adjudicataire recevera aussitot l'ouvrage sera recu le prix de l'adjudication a un nombre tres considérable d'habitants et d'autres etant assemblée nous avons fait proclamer a haute voix par Jean Baptiste Casabru, crieur ordinaire, que nous alons presentement proceder, a la susdit adjudication au rabois aux clauses et conditions cy-devant specifiees, et apres plusieurs criees et tout pasonue et ou moietié de mettre a la dite entreprise a l'enchere elle finuesd'abord par le S. Raymond Brand a raison de soixante et quinze piastres par arpent decrevee, chemain et fossé de transpiration avec ses ecoulemens comme cy-dessus dès et ensuite par le Sieur Joseph Landry, a soixante piastres par arpent, et apres plusieures criees et avons attendu plus d'une heure et demie sans qu'il ce soir presente d'autre entrepreneur pour mettre la dite entreprise au rebois nous avons de nouveau fois publier et proclamer a haute voix que la presente, criee etait la premiere et que l'on procedera en ce meme nin Dimanche dix neuf du presente mois pour la seconde fois et derniere criee apres quois nous avons clos le present proces verbal en presence des Sieurs Joseph Bujeaud et Pierre Arieux, temoins d'assistance requis qui ont signé avec nous le jour moins et an comme dessus.

(Signé) PIERRE ARIEUX.

BUJAUD.

Et nous commandante. EVAN JONES.

Et Dimanche dix neuf du mois de Novembre susdit de l'année mil sept cent quatre vingt dix sept je commandant susdit, en certifie etre transporté devant la porte principale de l'Eglise paroisseal au district susdit ou a la sortie de la Sainte Messe au nombre tres considerable d'habitants et autres etant assemblée nous avons de nouveau fois publier et proclamer a haute voix par Jean Baptiste Cazebon, crieur ordinaire que nous alons tout presentement proceder pour la seconde fois a deuxieme criee a l'adjudication au rabois de l'entreprise specific dans la proces verbal precedent et auxmeme causes et conditions selon lesquelles la dite entreprise avait été mise lors de la premiere criée par Mr. Joseph Landry, a raison de soixante piastres par arpent, et presentement par le Sieur Raymond Brand

a cinquante huit piastres, par Mr. Joseph Landry a cinquante cinq piastres, et par le Sr. Joseph Melancon a cinquante quatre piastres par arpent, et apres plusieurs criees et avoir attendu plus d'une heure et demie sans qu'il sesois presenté d'autre entrepreneur pour mettre la dite entreprise au rebois nous avons de nouveau fois publier et proclamer haut voix par le sindic Jean Baptiste Cazebon, crieur ordinaire que la presente etait pour la seconde fois et deuxieme criee que l'on procederon en ce meme jour Dimanche vingt six du presente mois de Novembre, à l'adjudication finale de la susdite entreprise apres quois nous avons clos le present proces verbal en presence des Sieurs Joseph Bujaud et Pierre Arieux, temoins, d'assistance requis qui ont signé avec nous le jour mois et an comme dessus.

Jos. Bujuad. PIERRE ARIEUX.

Et nous commandant.

EVAN JONES.

Et Dimanche vingt six du mois de Novembre de l'annee mil sept cent quatre vingt dix sept je commandant susdite on a issue de la Sainte Messe un nombre tres considerable d'habitants et autre etant assemblee, nous avons de nouveau fois publier et proclamer au haut et inteligible voix par le susdit Jn Bte. Cazebon, crieur ordinaire, que nous alons presentement proceder pour la troisieme et derniere criée a l'adjudication finale au rabois de l'entreprise susdite et aux clauses et conditions cy-dessus specifiee selon lesquelles la dite entreprise avait été mise sous la seconde criée par le Sieur Joseph Melaunne a raison de cinquante quatre piastres par arpent de levée chemin, fossé, et transpiration et les ecoulemens comme cy-devant dit et presentement par Sr. Joseph Landry a cinquante deux piastres, par le Sr. Raymond Brand a cinquante piastres, et par Mr. Joseph Landry a quarante neuf piastres par arpent, et apres plusieurs criées et avoir attendu plus de deux heur, sans qu'il se sois présente d'autre entrepreneur pour mettre la dite entreprise au rabois, nous avons adjugé et adjugerons finalement et definitivement la dite entreprise au susdit Sieur Joseph Landry, a raison de quarante neuf piastres par arpent de levée chemain, et fosse de transportation avec ses ecoulemens comme ci-devant specifiee a le dit Sr. J. Landry etant present a accepté la dite entreprise selon se conformer aux clauses et conditions susdits et a promis des executer et remplir exactement et fidelement avant les aux haute de la prochaine année la consequence nous avons arretter et clos la presente adjudication, et le susdit Sieur Joseph Landry a signé le presente acte en presence des Sieurs Bujaud et Pierre Arieux temoins requis qui ont signé avec nous commandant le jour moins et au comme cy dessus.

JOSEPH LANDRY.

Jos. Bujaud, Pierre Arieux.

Et nous commandant.

EVAN JONES.

Nous soussigné sindic de la paroisse et district et paroisse de la Chitamachas certifions et declarons à tous ceux qu'il appartiendra qu'aujourd'hui cinq du mois de Mars de l'annee mil sept cent quatre vingt dix huit par ordre de Mr. Evan Jones, commandant au dit district nous *nous* sommes transportes aux Houmas a fin d'examiner la levée, le chemain le fossé de transpiration les ecoulemens, et les ponts fait par Mr. Joseph Landry, sur la terre appartenant a la succession de feu Mr. de S. Maxent, specifies dans le proces verbal de adjudication precedants et meme mieux a tous les egards: au foi de quoi nous donnons la presente declaration a Lafourche, le jour mois et an comme dessus.

PAUL LANDRY, *Sindic.*
CHARLES LENCOUR, *Sindic.*
JOSEPH BABIN, *Sindic.*

A Lafourche de Chitamachas et paroisse de l'Ascension aujourd'hui cinq au mois de Mars de l'année mil sept cent quatre vingt dix huit, je commandant d. district susdit certifie a tous ceux qu'il appartiendra m'est transporté aux Houmas pour visiter la nouvelle levée, la chemin le fossé de transpiration et les ecoulemens, &c. fait par Mr. J'h Landry, sur la terre appartenant a la succession de feu Mr. de St. Maxant, ce que je trouve parfaitement bien fait, et conforme au conditions specifies dans le proces verbal cy-devant et meme mieux en consequence j'ai mettre la dite levée que j'ai trouvé environ trente deux arpens et deux toises de long, conforme au plan ci jouté. En foi de quoi je donne la presente a Lafourche le jour mois et an comme cy-dessus.

EVAN JONES.

Montant des frais—

32 arpens et 10 toises de levée, &c. $ 49 par arpent]	- -	$ 1,568
Du Commandant, &c.		
3 vacations, &c. l'adjudication, a $ 15,4 ps - -	16,4	
3 arpens, &c. la diferentes paroisse - -	1,4	
Pour l'acte de l'adjudication - - -	3,00	
	23,00	
Pour le crieer, - - - - -	1,04	
a t		
L'arpentage de la levée, 32 10 - -	16,	
Plan ou copie avec certificat, &c. - - -	3, 4	
	-	44
		$ 1,612

29 arpents de terre de la succession de M. de St. Maxant aux Houmas.

Na. Il y a quelques arpens de defisitrois sur la partie d'en las et tous reste en bois acousl.

I certify the foregoing to be a true copy of the original, resting in the archives of the parish of Ascension.

In testimony whereof, I have hereunto set my hand, and affixed my seal of office, this 16th day of Feb'y, eighteen hundred and nineteen.

CARLIER DONTRIMER, *Judge.*

A Lafourche de Chitimachas paroisse de l'Ascension et province de la Louisiane, aujourd'hui douze du mois d'Aout de l'année mil sept cent quatre vingt dix huit nous Dn. Evan Jones, cap'n au regiment de milice provincial d'infantrie des Alemands et commandant du district fut dit a fin de remplir et executer le decree precedant, nous sommes transporté a la porte principale de l'Eglise de la susdite paroisse ou a la sortie de la Sainte Messe un nombre considerable d'habitants et autres etaint assemblé nous avons fair publier et proclamer a haute et intelligible voix par Jean Baptiste Cazebon, crieur ordinaire que nous allions tout présentement proceder a la vente et adjudication finale au plus haut et dernier encheuseur de la susdite terre situee aux Houmas appartenant a la succession du defunt Colonel Dn. Antonio Gilbert de St. Maxant, contenant vingt neuf arpents de face sur la profondeur qui pour a s'y trouva environ d'environ trente six degres attendu par en haut a la terre de François Duhon et par en bas a celle de Patric Conway, a condition que l'adjudicataire ou acquireur sera tenu de payer le prix de l'adjudication au comptant et la dessus la dite terre ayant été criee et proclamee à haute voix et tout personne invitter a l'enchere elle fut mise d'abord par le Sr. J'h Landry, a la somme de onze cent piastres gourdes ensuite par le Sr. Raymond Brand a onze cent cinquante piastres, par le Sr.

J'h Landry a douze cents piastres, par le Sr. Raymond Brand a trieze cent piastres, par le Sr. Paul Landry a mil quatre cent piastres, par le Sr. Raymond Brand a mil cinq cent piastres, par le Sr. Joseph Landry a mil cinq cent cinquante piastres, par le Sr. Joseph Brand a mil six cent piastres, par le Sr. Joseph Landry a mil six cent vingt cinq piastres, et par le Sr. Louis Faurie a la somme de mil six cent cinquante piastres, et apres plusieures criees et avoir attendu plus de deux heur sans qu'il se soit présente personne pour augmenter au couvrer la dite enchere, nous avons adjugé et adjugerons finalement et definitivement la dite terre avec toutes ses circonstances et advantages quelconque telle qu'elle se trouve actuellement au susdit Sieur Louis Faure, et a ses heritiers pour toujours pour la susdite somme de mille six cent cinquante piastres qu'il nous a compté et payé comptant; et le dit Sr. Louis Faure etant present et ayant accepté et aprouvé la dite adjudication en sa faveur, il se declaré satisfait et content pour avoir visite la susdite terre, nous avons arreté et arretons la presente adjudication, et le susdit Sr. Louis Faure a signe le present acte en presence de Sr. J'h Bujeaud, Pierre Aieux, Joseph Comeu, et Raymond Brand, temoins d'assistance requis qui ont signé avec nous le jour mois et an comme cy-dessus. LOUIS FAURE, J'H BEJEAUD, PRE. ARIEUX, JOSEPH COMEAU, RAYMOND BRAND.

Et nous commandant.

EVAN JONES.

Pour copie conforme a l'original qui nous avons envoyer au tribunal de Mr. Juan Vincent Morales, Intendante par interim pour ses ordres, la presente copie devra rester parmi les archives de notre commandant.

A Lafourche, *le* 1 *Aout*, 1798.

EVAN JONES.

A Lafourche de Chitimachas aujourd hui dix sept du mois d'Aout de l'année mil sept cent quatre vingt dix huit par devant nous Evan Jones, commandant susdit et les temoins d'assistance ci-apres nommees s'est présente Mr. Joseph Landry, lieutenant de milice et habitant de susdit district, lequel a confessé et declaré avoir recu du dit commandant Evan Jones la somme de mille six cents douze piastres pour payement de la levée, chemain fossé et transpiration ecoulemens et pont fait sur la terre aux Houmas, ci-devant mentionnes y compris les du dit commandant frais d'arpentage de la levée, &c. selon le decree du tribunal et aussi la somme de seize piastres, deux esceillirs et demie que l'on a calculé comme dans le compte presenté du dit tribunal pour la dite levee, &c. trente deux arpents et dix toises de levee, &c. et quarante neuf piastres l'arpens faisent mille cinq cent quatre vingt quatre piastres, comme il a ete calcule: en foi de quoi il a signé le presente recu en presence de Sr. Joseph Bejeaud et Pierre Arrieux, temoins d'assistance requis qui ont signé avec nous le jour mois et an comme cy-dessus. J'H LANDRY, J'H BUJEAUD.

P're Aucoir et nous commandant.

EVAN JONES.

Note de derniers frais, savoir:

3 auctions du com'dt pour l'adjudica're ps. - - - -	16,4
4 afiche a l'acte d'adjudicature - - - -	5,4
Pour le crieer - - - - - - -	3,
	ps. 25.00

La succession redroit ps. 3,2½. E. JONES.

Conforme a l'original. E. JONES.

I certify the foregoing to be a true copy of the original, resting in the archives of the parish of Ascension.

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In testimony whereof, I have hereunto set my hand and affixed my seal of office, this fifteenth day of February, in the year of our Lord one thousand eight hundred and nineteen.

(Signed) CARLIER DONTRENIER, [L. S.]
Judge.

Copy of documents referred to in the foregoing bill of exceptions, marked E

Land Office, New Orleans, Territory of Orleans—Eastern District.

No. 133. Notice of claim of Donaldson and Scott, filed, New Orleans, February 28th, 1826.

J. W. GURLEY, *Register.*

Notice of claim of Donaldson and Scott, of the county of Acadie, in the Eastern district of the Territory of Orleans. They claim a tract of land situated in the county aforesaid, on the left side of the river, about twenty-two leagues from the city of New Orleans, containing 29 acres front, with opening and depth according to the annexed plat, executed by ——— Lafon, from a survey and journal made by William Marriner, at the desire of the claimants, and appointed for that purpose by his excellency, Governor Claiborne, which order is annexed.

Said lands are part of a tract originally granted to Maurice Conway by his excellency, Governor Galvez, 21st June, 1777; which grant is now upon your register, and which, by subsequent sales, became the property of the late Colonel Maxant, who having neglected to keep the levee in repair, they were sold by order of the Intendent of the province, Don Juan Venturo Morales, at vendue; official copy of which sale is hereunto annexed, and by subsequent sales, which are also annexed, became the property of the claimants.

(Signed) DONALDSON & SCOTT.

NEW ORLEANS, *24th February*, 1806.

I certify the foregoing to be a true copy of the original notice on file in my office. In faith whereof, I hereunto subscribe my name, at New Orleans, this 13th March, 1830.

(Signed) HILARY B. CENAS,
Register East. Dist. Louisiana.

[A plat accompanies the original, p. 84.]

Survey.

A la Nouvelle Orléans, le 28 du mois de Decembre 1804, et le 29eme de l'annee de l'Independence des Etats Unis d'Amérique, I. soussigné, Bme. Lafon, arpenteur commissionnée par Mr. Claiborne, Gouverneur du territoire pour arpenter les terres concedées, certifie le present plan conforme aux arpentages faits par William Marreuer du 27 Juin, du 4 Aoust, et du 3 Decembre, de l'année mil huit cent quatre a la requisition des Messrs. Donaldson & Scott, et aux mesures que j'executais en 1803. sur la riviere a Iberville, lequel plan est compose d'une portion de terre de vingt neuf arpens de face situé aux quartier des Houmas rive gauche du fleuve a 22 lieues et demi de la Nouvelle Orléans, limitees par deux lignes dont l'un superieure courant N. 50° O a quatre cent soixante apes et quinze toises de profondeur, et se termine au bord de la riviere d'Iberville dengée par deux bornes de cipre distantes d'un arpent l'un de l'autre. La deuxième courant du No. 13° 45 O, a trois cent quatre vingt arpens, et se termine a la meme riviere d'Iberville, laquelle terre se trouve bornée au S. O. par le nommé sud-ouest, et au S. E. par le Mississippi, au N. E. par Daniel Clark, et au N. par la riviere d'Iberville. Cette terre lui appartenant par l'avoir acquise du Docteur Faure lequel l'avait obtenu de l'encant public en date du 12 Aout 1798, fait par ordre de l'Intendant de la province de la Louisiane.

En foi de quoi j'ai donné le present plan et proces verbal meme jour et an que dessus.

(Signé) LAFON, *Arpenteur Deputé.*

Petition.

To his excellency, William C. C. Claiborne, esq. governor of the Mississippi Territory, exercising the powers of Governor General and Intendant of the province of Louisiana. The petition of William Donaldson, in behalf of himself and William Marrinner and Patrick Conway, owners of a tract of land situated on the island of New Orleans, in the district of Lafourche, commonly called the Houmas, humbly sheweth: that the said tract was granted to one Maurice Conway, under whom your petitioners claim, by his excellency, Governor Galvez, on the 21st June, 1777, as appears by the said grant now in your petitioners' possession, ready to be produced if your excellency shall direct. That your petitioner being desirous of ascertaining the outlines and boundaries of the said land with such precision as to avoid any interference with the proprietors of neighboring grants, and thereby prevent expensive disputes, humbly prays that your excellency will be pleased to permit the said William Marrinner, or such other person as may be appointed for that purpose, to survey the said tract of land, and mark the boundaries thereof; and, at the same time, that direction may be given to the proprietors of the adjoining patents to show their boundaries to the said surveyor, that he may avoid any interference therewith, and to the commandant of the district to protect him from all illegal disturbance in the prosecution of the said work; and your petitioner will ever pray.

(Signed) WM. DONALDSON.

Decree.

The proprietors of land adjoining the tract within mentioned, are requested to show their respective boundaries, and the commandant of the district, if necessary, will extend to the surveyor his protection.

(Signed) WILLIAM C. C. CLAIBORNE.

LAND OFFICE, *New Orleans.*

I, Hilary B. Cenas, register of the land office for the eastern district of Louisiana, do hereby certify that the foregoing *plan, proces verbal, petition, and decree*, are true copies from a register in my possession, entitled "Register A. No. 1, of the claims to land recorded in the Register's office, and laid before the board of commissioners of the eastern district of the territory of Orleans at their first session." And I further certify, that in a folio pamphlet, also in my possession, purporting to be "a transcript of the decisions of the board of commissioners for ascertaining and adjusting the titles and claims to land within the eastern district of the territory of Orleans, in favor of claims within said district," is extant the following decision, to wit:

"*Monday, 10th March*, 1806.

W. DONALDSON and J. W. SCOTT.

No. 133.—William Donaldson and John W. Scott claim a tract of land situated in the county of Acadia, on the left bank of the Mississippi, about twenty-two leagues above the city of New Orleans, containing twenty-nine acres front, with the depth to the river Amite; bounded on the upper side by land of one

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Smionet, and on the lower by land of Daniel Clark. It appearing to the board, from an instrument of writing exhibited, that said land was sold at public auction on the 12th day of August, 1798, before Evan Jones, at that time commandant of Lafourche, to Louis Faure; and it appearing from sundry deeds of conveyance, likewise exhibited, that said land has become the property of the present claimant, the board do hereby confirm his said claim."

In faith whereof, I hereunto subscribe my name, at the city of New Orleans, this 30th day of March, 1830.

(Signed) HILARY B. CENAS,
Reg'ter Eastern Dist. Louis.

COPY OF DOCUMENT MARKED F.

Land Office, Eastern District of Louisiana, at New Orleans.

DATE OF CERTIFICATE.	NO. OF CERTIFICATE.	NAME.	RESIDENCE.	TRACT PURCHASED.			QUANTITY.		RATE PER ACRE.		AMOUNT OF PURCHASE MONEY.	
				SECTIONS, OR PART OF.	TOWNSHIP.	RANGE.	ACRES.	100	DOLLS.	CTS.	DOLLS.	CTS.
May 10, 1822	393	John Minor	co'y of Acadia				728		1	25	910	
Aug. 28, 1824	435	John Minor	co'y of Acadia				172	67	1	25	215	83
Aug. 28, 1824	436	John Minor	co'y of Acadia				204	60	1	25	255	75

I certify the foregoing to be true extracts from "the Register of Certificates" now in my possession.
In faith whereof, I hereunto subscribe my name, at New Orleans, this 11th March, 1830.

(Signed) HILARY B. CENAS,
Register East. Dist. Louisiana.

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Copy of document marked G, referred to in the foregoing bill of exceptions:

To the Register of the Land Office for the Eastern District of Louisiana, at New Orleans.

SIR: In virtue of an act of Congress, dated the 11th May, 1820, I apply to become the purchaser of a tract of land adjacent to, and back of, a front tract already owned by me, which said front tract contains eighteen arpens 24 toises front, and forty arpens in depth, situated in the county of Acadia, parish of Ascension, and bounded as follows, viz: front on the left bank of the river of Mississippi, at present above by lands of Pere, and below by lands of S. Henderson and J. Anderson. This land is composed of smaller tracts, confirmed in the names of John Kling, Firmin Dupuy, Maria Dupuy, and ierre Dupuy, the lines open; the said back land now claimed by right of pre-emption, extends in depth ———arpens, beginging at the rear of the said front tract, and contains eight hundred and sixty superficial arpens, not being a greater quantity than is contained in my front tract, and does not extend so far back as to include any lands fit for cultivation bordering on any river, creek, bayou or water course.

(Signed) JOHN MINOR, by PHILIP MINOR.

NEW ORLEANS, *April 13th*, 1822.

I certify that, from the records in my office, expressing the quantity of land contained in the applicant's front tract, (the surveys in this district not having been executed) and in virtue of the laws in this case made and provided, it appears the said applicant is entitled to the quantity of land for which he has applied, viz: eight hundred and sixty superficial arpens, on paying the price of one dollar and twenty-five cents per acre.

(Signed) SAM'L H. HARPER, *Register.*

Copy of document marked H, referred to in the foregoing bill of exceptions:

RECEIVER'S OFFICE,

New Orleans, August 28th, 1824.

No. 435.—Received of John Minor the sum of two hundred and fifteen 83-100 dollars, being the purchase money for his pre-emption right to a tract of land containing one hundred and seventy-two 47-100 superficial acres, and adjacent to, and back of, his front tract, situate in the county of Acadia, and bounded as per description filed with the register; and for which said tract of back land, the said John Minor will be entitled to a patent from the United States, according to law.

(Signed) J. J. McLENAHAN, *Receiver.*
W. L. ROBESON, *Receiver.*

A true copy:
5th June, 1829.

RECEIVER'S OFFICE,

New Orleans, August 28th, 1824.

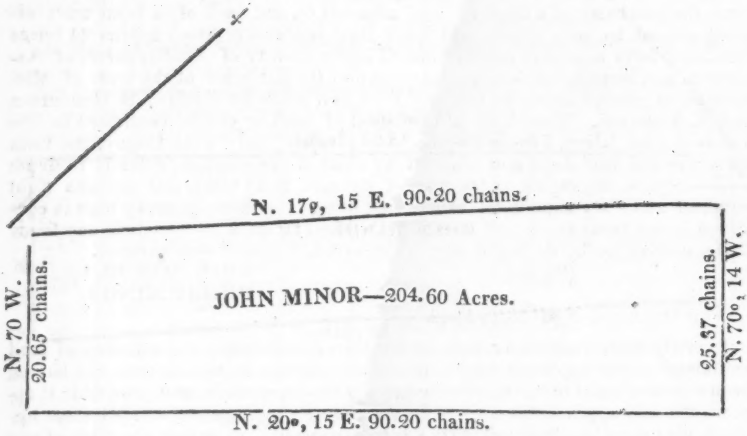
No. 436.—Received of John Minor the sum of two hundred and fifty-five 75-100 dollars, being the purchase money for his pre-emption right to a tract of land containing two hundred and four 60-100 superficial acres, and adjacent to, and back of, his front tract, situate in the county of Acadia, and bounded as per descriptions filed with the register, and for which said back tract of land the said John Minor will be entitled to a patent from the United States, according to law.

(Signed) J. J. McLENAHAN, *Receiver.*
W. L. ROBESON, *Receiver.*

A true copy:
5th June, 1829.

Copy of the surveys marked J and K, referred to in the foregoing bill of exceptions.

John King, Claimant.



STATE OF LOUISIANA,

Parish of Ascension, Sept. 13th, 1824.

At the request of the claimant, John Minor, I have surveyed for him a tract of land which he claims as a pre-emption right, pursuant to the provisions of the first section of an act of Congress, approved February 28th, 1823, entitled "an act to revive and to continue in force the seventh section of 'an act supplementary to the several acts for the adjustment of land claims in the State of Louisiana,'" approved the 11th May, 1820, being in section No. —— township No. ——, range No. ——, of the bases meridian, and lying adjacent to, and back of, a tract of land situate on the left bank of the river Mississippi, bounded as follows, viz: beginning at a post 40 arpens from the river, and run W. 70º, W. 20.65 chains to a post; thence, W. 17º, 15 E. 90.20 chains, and planted a post; thence, returned to the place of beginning, and run W. 20º, 15 E. 90.20 chains, and planted a post; thence N. 70, 14 W. 25.37 chains, to the post planted on the upper line, where I closed the survey, containing two hundred and four acres and sixty-hundredths of an acre, and having such form and marks, natural and artificial, as are represented in the annexed plat.

AMBROSE BRIDGES,
J. MORRIS,
Chain Carriers.

(Signed) ROBERT LLOYD,
Deputy Surveyor.

Examined and approved.

(Signed) JOHN C. TURNER,
P. D. Surveyor.

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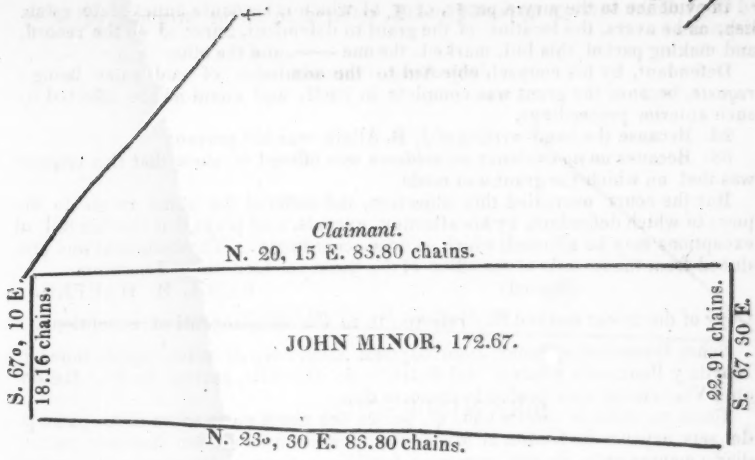

Claimant.

STATE OF LOUISIANA,

Parish of Ascension, September 14th, 1824.

At the request of the claimant, John Minor, I have surveyed for him a tract of land which he claims as a pre-emption right, pursuant to the provisions of the 1st section of the act of Congress, approved February 28th, 1823, entitled an act to revive and to continue in force the seventh section of an act, entitled an act supplementary to the several acts for the adjustment of land claims in the State of Louisiana, approved the 11th day of May, 1820, being in section No. ——, township No. ——, range No. ——, of the basis meridian, and lying adjacent to, and back of, a tract of land situated on the left bank of the river Mississippi, bounded as follows, viz: begining at a post 40 arpens from the river, and run N. 20° 15, 83.80 chains, and planted a post; thence returned to the place of begining, and run S. 67°, 10 E. 18.16 chains, to a post; thence, N. 23°, 30 E. 83.80 chains to the post planted on the lower corner, where I closed the survey, containing one hundred and seventy-two acres and sixty-seven-hundreths, and having such form and marks, natural and artificial, as represented in the above plat.

(Signed) ROBERT LLOYD, *D. Surveyor.*

Examined and approved.

(Signed) JOHN C. TURNER, *P. D. Surveyor.*

And afterwards, to wit: on the trial of the cause, on the 15th day of March, 1830, the defendants took the following bills of exceptions, which were allowed and ordered to be filed, to wit:

U. S. District Court—Eastern District Louisiana.

JOHN MINOR,
vs.
SHUBAL TILLOTSON.

On the trial of this cause, the plaintiff, on this 13th day of March, 1830, offer-

ed in evidence to the jury a paper, copy of which is hereunto annexed, to establish, as he avers, the location of the grant to defendant, annexed to the record, and making part of this bill, marked, the one ——, and the other (1.)

Defendant, by his counsel, objected to the admission of said paper being a *requete*, because the grant was complete in itself, and could not be affected by such anterior proceedings.

2d. Because the hand-writing of J. B. Allain was not proven.

3d. Because no *no* evidence *no evidence* was offered to show that this requete was that on which the grant was made.

But the court overruled this objection, and suffered the same to go to the jury; to which defendant, by his attorney, excepts, and prays that this his bill of exceptions may be allowed; which is done accordingly. The document was produced from the records of the office of the Surveyor General of Louisiana.

(Signed) SAM'L H. HARPER.

Copy of document marked (1,) referred to in the foregoing bill of exceptions:

Señor Governador, Señor: Juan Baptista Alen, cavo de milic. expediciones de Movila y Penzacola y habite. del districto de Iberville, parrqa. de Sn. Bendo. ante Vsa. con el mas profundo respecto dicè.

Como ya cerca de quince años ql. porsee una tierra en la sobre dicha parroqa. de seis arpanes de frento, al Misisipi la ql. encuentra no ser. bastante para el diario manteniento. de una numerosa familió qe. tiene ni tampoco para emptear es trabajo de tres niños larones qe. tiene con cair exencio podran serviter a su pl. y al pais y conociendo el ardiente deseo conqe. vsa. se esencia., en fomentar estos pises y proteger a los pobres portanto.

Suppeo. a vsa. se sirva acordarme sbre. las inumerosas tierras, ql. estan vacantes y al domo. de S. Mg. (qe. Dios gue.) veinte arpanes de tierra situado cerca de las pradenias qe. Haman de B'ñaux hasta la profundura de quarenta arpanes del Misisipi cuias lineas tua dos a la profundura la del lado derecho coma con la tierra qe. tiene concedida chs. Luis Compte y una y otra linea
al sur como as á mismo la linea del frento de dha. tierra al norte.

Este favor Sor. Governador especio recivir de la notoria predad de rsa. con los miserables a loqe. nunca podre manifestarme bastantemente agreacedo sin es con pedir el todo poderoso legue pa. bien dessa. Prova. los m. a, de su deseo.

B'TE ALAIN.

IBERVILLE, *y dia* 15 *de Fevro. de mil sete y ochenta y sietc.*

SENOR GOVERNADOR.

NUEVA ORLEANS, 8 *de Mazo de* 1787.

El agremensor gral. de esta provincia establecia esta parte sobre los veinte arpanes de tierra de frente, con la profundidad ordinaria de quarenta en el parage que solicita estando vacantes y'm causando proficio con las expresas condiciones de hacer los caminas y des montos necesarios en el termino de mes año de quedar nala esta concesion si al expirar el prean expacio de tres años la tierra no se hallan establecida y de no poder enagenarla en los mismas tres baxo aujo indispensable supuesto entendera las deligencías de aper que me remitiera para prover alinto resado del correspondente título en forma.

ESTAVAN MIRO.

Le soussigne certifie la copie ci dessus etre un fidele calque d'une piece originale déposée dans les archives de l'arpenteur général.

N. ORLEANS, *le* 6 *June*, 1829.

Pour l'arp'r général absent:

BOURGCOL,
Deputede 'Hept. General

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U. S. District Court—Eastern District Louisiana.

JOHN MINOR,
vs.
S. TILLOTSON.

On the trial of this cause, on the 12th day of March, 1830, the plaintiff offered in evidence a survey purporting to be by Walker Gilbert, and which accompanies this bill of exceptions, and makes part hereof; the defendant, by counsel, objected to the admission of said paper to go to the jury, because not purporting to be executed by W. Gilbert under any sufficient order, or by legal direction:

2d. Because done at the request of the claimant, under whom plaintiff derives title, and the parties under whom defendant claims, to wit, the widow and heirs of J. B. Allain, et al. as appears by the annexed title deeds, marked 1 and 2, beginning from the grant to Allain to the sale to defendant, were none of them notified as they ought to have been:

3d. Because on the face of it, the said survey appears to be illegal and insufficient, and shows that the surveyor never actually surveyed the ground.

But the court overruled these objections, and admitted the paper to the jury; to which defendant excepts, and prays that this his bill of exceptions may be allowed; which is done.

(Signed) SAM'L. H. HARPER.

Copy of the survey executed by Walker Gilbert, and referred to in the foregoing bill of exceptions:

At the special request of Madame Lewis Judice, I have measured the tract of land as above represented, in conformity with an order or warrant of survey granted to Lewis Le Counte, the eighteenth day of January, one thousand seven hundred and eighty-seven. Began at the S. W. corner, near the bluff of what is called the High Prairie; thence, run the direction as above, S. 80° East 116. 36 chs. equal 40 arpens; thence, at right angles, North 10°, East 58.18 chains, equal 20 arpens; thence, from the place of beginging, North 10° East, following the bluff, or western margin of the prairie, 58.18 chains, planted a cypress post at the N. W. corner; thence, South 80°, West 2.91 chains, planted a cypress post, 14.50 chs. cross a small gully running from the Western margin of the prairie, at 22. chains cross the road leading from the river to Galveztown, 23.50 chains to a low cypress pond running on the eastern margin of the prairie; thence, 116.60 chains, intersect the back line, making a superficial content of eight hundred arpens and an half; situated in the district of Galvez, about one league distant from the Mississippi. This twenty-second day of March, one thousand eight hundred and eleven.

WALKER GILBERT, *P. D. Surveyor.*
E. Dist. Orl. Ter'y.

U. S. Dist. Court—Eastern Dist. Louisiana.

JOHN MINOR,
vs.
S. TILLOTSON.

On the trial of this cause, on the 15th day of March, 1830, the plaintiff offered to introduce in evidence before the jury a certain paper, hereunto annexed, and marked (3,) making part of this bill of exceptions, purporting to be an extract from the books or records of the parish Judge of the parish of Iberville. Defendant, by his counsel, objected to the reading of this paper, on the ground that no extract was legal evidence, and that the whole record of the succession, or a

certificate that this is the whole record in the matters of the succession of J. B. Allain, dec'd, was alone admissable; but the court overruled the objection, and permitted the paper to go to the jury; to which opinion of the court the defendant excepts, and prays this his bill of exceptions may be allowed; which is done accordingly.

(Signed) SAM'L H. HARPER.

Copy of document marked (3,) referred to in the foregoing bill of exceptions:

Aujourd'hui dix septième du mois de Mai mil sept cent quatre vingt douze a la requisition de Dame Marguerite Blanchard veuve de Jean Bte. Alain, resident dans ce district, de Joseph Maué Landry, Jeromi Landry, Pierre Allain, et Simon Allain, grand père et oncles aux mineurs. Moi commandant au district d'Iberville, province de la Louisiane, presence des temoins soussigné je me suis transporté sur la ditte habitation de la dite veuve et me mettant en devoir de proceder à l'inventaire dont il s'agit, avons reçu le serment de Marguerite Blanchard, veuve Allain, comme avant alors et depuis le deces de son marit elle n'a rien enlevée ni detournée qu'il ne'st pas à sa connaissance que personne n'ait rien enlevé ni detourné aucuns choses des biens delaisés par feu son marit voulant également proceder a l'estimation de tous les parens mentionnes cy-dessus ont fait choix des suins Bonnaventure Le Blanc et Simon Joseph Dupuy, habitans de ce district qui ont aussi a l'instans prettes serment de fidellement proceder à l'estimation qui leur est defferie, avons etablie pour tuteur aux mineurs pour la confection du present inventaire seulement le Sieur Simon Landry leur oncle. En consequence avons commencée à inventorier et estimer ce qui sait. Une habitation située sur la rive gauche du fleuve Mississippi, tenante par le haut aux terres du Sieur Joseph le Blanc, et par le bas a celles de Mr. Joseph Basquez Vahamonde contenante environ huit arpens de face sur la profondeur ordinaire de quarante arpens, les Baptises Clotenes, telle qu'elles se comportent et contiennent a present qui appartient a la succession, pour avoir été achetée par le defunt de Bonnaventure Forrest la dite habitation estimée a la somme de six cent cinquante piastres. Une autre habitation située aux terres hautes contenante environ huit cents arpens de superficie et toutes en friches sans aucun travaux qui à été concedée au defunt suivant les titres de concession et plan en datte au huit Janvier mil sept cent quatre vingt neuf, estimée a la somme de vingt cinq piastres.

I, John Dutton, Judge of the parish of Iberville, do hereby certify the foregoing to be a true extract from the original remaining in my office.

In testimony whereof, I have hereunto set my hand and seal, this second day of May, in the year 1829.

(Signed) JOHN DUTTON,
Parish Judge.

And afterwards, to wit: on the 20th day of March, 1830, came the said John Minor, by his attorney, and filed the following petition for a writ of error, to wit:

To the honorable Judge of the District Court of the United States for the Eastern District of Louisiana, the petition of John Minor, respectfully showeth: that your petitioner complains of error in the judgment of this honorable court in the suit brought by him against Shubal Tillotson.

Wherefore, your petitioner prays a writ of error in the said case to the Supreme Court of the United States, and offers Philip Minor, of Louisiana, as his security. As in duty bound, &c.

(Sig'd) ISAAC T. PRESTON,
Att'y for the pet'nr.

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Judge's Order.

Let the prayer of the petitioner be granted on his giving bond in one thousand dollars, conditioned according to law, with Philip Minor as security.

(Sig'd) SAM'L H. HARPER,
Judge U. S. for Louis'a.

Bond.

UNITED STATES OF AMERICA—*Eastern District of Louisiana, ss.*

Know all men by these presents, that we, John Minor, by his agent, Philip Minor, as principal, and the said Philip Minor as security, are held and firmly bound unto Shubal Tillotson in the just and full sum of one thousand dollars, lawful money of the United States; for the payment whereof, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at the city of New Orleans, this twentieth day of March, eighteen hundred and thirty. Whereas the above bonden John Minor has this day filed a petition, praying that a writ of error may be allowed to him from a certain final judgment rendered against him in the suit of John Minor *vs.* Shubal Tillotson, in the district court of the United States in and for the eastern district of Louisiana, on the 15th day of the present month of March, one thousand eight hundred and thirty:

Now, the condition of the above obligation is such, that if the above bonden John Minor shall prosecute his said writ of error to effect in the Supreme Court of the United States, and shall pay and satisfy whatever judgment may be there rendered against him by the Supreme Court of the United States in the premises, then, and in that case, the above obligation is to be null and void, else to be and remain in full force and virtue.

(Signed) JOHN MINOR, by
PHILIP MINOR, [L. S.]
PHILIP MINOR, [L. S.]

Signed, sealed, and delivered, in presence of
(Sig') F. W. LEA.

And afterwards, to wit: on the 22d day of March, in the year eighteen hundred and thirty, the said John Minor, by his attorney, lodged in the clerk's office the following writ of error, together with a copy thereof for the defendant, to wit:

COURT OF THE UNITED STATES—*Eastern District of Louisiana, ss.*

JOHN MINOR
vs.
SHUBAL TILLOTSON.

The President of the United States of America to the honorable Samuel H. Harper, Judge of the District Court of the United States for the Eastern District of Louisiana:

Because on the record and process, and also on the giving of judgment on the plaint which was in said court before you, between John Minor and Shubal Tillotson, manifest error hath intervened to the great damage of said John Minor, as we, from complaint, are informed, we being willing that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the party aforesaid in this behalf:

Do command you that you do distinctly and plainly, under the seal of the dis-

trict court for the eastern district of Louisiana, send the record and process of the plaint aforesaid, with all things concerning them, and this writ, into the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the first Monday of August next, that the record and proces aforesaid being inspected, the said Supreme Court may cause to be done thereupon for correcting the said error, what of right, and according to the laws of the United States, ought to be done.

Witness, the Honorable John Marshall, Chief Justice of the said Supreme Court of the United States, this 22d day of March, in the year of our Lord, 1830, and in the 54th year of the independence of the United States.

F. W. LEA, *Clerk.*

And afterwards, to wit, on the 31 day of March, in the year of our Lord one thousand eight hundred and thirty, the following citation, in error, was issued to the defendant, to wit:

To SHUBAL TILLOTSON, *Greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in the city of Washington, in the District of Columbia, being the place of the sessions of said court, on the first Monday in August next, pursuant to the within contained writ of error, to show cause, if any there be, why the judgment rendered against John Minor, as within mentioned, should not be reversed, and why the error complained of should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Samuel H. Harper, Judge of the district court of the eastern district of Louisiana, at the city of New Orleans, this 31st day of March, 1830.

SAM'L H. HARPER.

Upon which citation, the Marshal made the following return, to wit:

[*Original*—make your return here.]

Rec'd the within citation the eight day of May, eighteen hundred and thirty.
Served the same the tenth of May, eighteen hundred and thirty.

FRANCIS LASSELLES,
U. S. D. Marshal.

Eastern District of Louisiana, to wit:

I, Franklin W. Lea, clerk of the district court of the United States for the eastern district of Louisiana, do hereby certify that the foregoing 106 (one hundred and six pages) contains a faithful and true transcript of the record and process, with all things concerning them, the bond, original writ of error, and citation in error, with the Marshal's return thereon, in the case No. 2552, entitled John Minor vs. Shubal Tillotson.

In testimony whereof, I have hereunto signed my name, and affixed the seal of said court, at the city of New Orleans, this 13th day of May, in the year of our Lord eighteen hundred and thirty, and in the 54th year of the independence of the United States.

F. W. LEA, *Clerk.* [L. S.]

UNITED STATES OF AMERICA—*Eastern District of Louisiana.*

I, Samuel H. Harper, Judge of the United States' district courts for Louisiana, do hereby certify that Franklin W. Lea, who has certified the foregoing transcript, is now, and was at the time of doing so, clerk of the district court of the United States for the eastern district of Louisiana, and to his official attestations.

as such, full faith and credit are due, and that the attestation to the said transcript of record is in due form of law.

Witness my hand, at the city of New Orleans, this 13th day of May, A. D. 1830.

SAM. H. HARPER,
Judge U. S. for Louisiana.

And afterwards, to wit: on the 15 day of July, 1831, the plaintiff, by his attorney, filed the following petition for a writ of error, to wit:

To the Hon. District Court of the United States for the Eastern District of Louisiana, the petition of John Minor, respectfully shows: that the writ of error, which your petitioner obtained in the suit wherein he was plaintiff and Shubal Tillotson defendant, was not returned unto the Supreme Court of the United States on the return day thereof. That the five years for suing out a writ of error has not yet elapsed.

Wherefore, your petitioner prays a writ of error in said case, returnable in the Supreme Court on the 2d Monday of January, 1832, on giving security for such additional costs as may accrue, having paid all costs now due, and that a citation may issue to said Shubal Tillotson to appear in said court accordingly, to answer said writ.

As in duty bound, &c.

ISAAC T. PRESTON,
Att'y for the Pe'tr.

Judge's Order.

Be it so, on the appellant entering into bond, with John Linton as surety in the sum of five hundred dollars.

SAM. H. HARPER,
Judge U. S.

And afterwards, to wit: on the 1st day of August, 1831, the plaintiff, by his attorney, lodged the following writ of error in the clerk's office, to wit:

The President of the United States of America to the honorable Samuel H. Harper, Judge of the District Court of the United States for the Eastern District of Louisiana:

Because on the record and process, and also on the giving of judgment on the plaint which was in said court before you, between John Minor and Shubal Tillotson, manifest error hath intervened, to the great damage of said John Minor, as we, from complaint, are informed, we being willing, that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the party aforesaid in this behalf:

Do command you, that you do distinctly and plainly, under the seal of the district court for the eastern district of Louisiana, send the record and process of the plaint aforesaid, with all things concerning them and this writ, into the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the 2d Monday in January next, that the record and process aforesaid being inspected, the said Supreme Court may cause to be done thereupon for correcting the said error, what of right, and according to the laws of the United States, ought to be done.

Witness, the hon. John Marshall, Chief Justice of the said Supreme Court of the United States, this 1st August, in the year 1831, and 56 year of the independence of the United States.

L. M. DAVIDSON, *Dy. Cl'k.*

And afterwards, to wit: on the 19th day of Nov. 1831, the following citation in error was issued from the clerk's office, to wit:

To SHUBAL TILLOTSON, his agent or attorney, *Greeting:*

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden in the city of Washington, being the place of the sessions of said court, on the second Monday in January next, pursuant to the within contained writ of error, to show cause, if any you have or can, why the judgment rendered against John Minor, as within mentioned, should not be reversed, and why the error complained of should not be corrected, and why full and speedy justice should not be done to the parties in this behalf.

Witness my hand and seal, at New Orleans, this 19th Nov. 1831.

SAM. H. HARPER,
Judge U. S. for Louisiana.

[Make your return here.]

Rec'd the above writ the 22d day of November, and served the same on defendant, personally, the same day, that is, the 22d of November, in the year of our Lord eighteen hundred and thirty-one.

FRANCIS LASSELLES,
U. S. Dy. Marshal.

COURT OF THE UNITED STATES—*Eastern District of Louisiana.*

I, Lewis M. Davidson, deputy clerk of the district court of the United States for the the eastern district of Louisiana, do hereby that the six last pages of the foregoing transcript contain a faithful and true copy of the writ of error and proceedings thereon, in the case of John Minor vs. Shubal Tillotson.

In testimony whereof, I have hereunto signed my name, and affixed the seal of said court, this 19th day of Nov. A. D. 1831.

L. M. DAVIDSON, *Dy Clerk.*

UNITED STATES OF AMERICA—*Eastern District of Louisiana.*

I, Samuel H. Harper, Judge of the United States for the district of Louisiana, do hereby certify that Lewis M. Davidson, who has certified the foregoing transcript, is now, and was at the time of so doing, deputy clerk of the district court of the United States for the eastern district of Louisiana, and that full faith and credit are due to his attestations as such, and that the certificate to the said transcript is in due form of law.

Given under my hand, this 19th day of Nov. A. D. 1831, at the city of New Orleans.

Judge U. S. for Louisiana.

SUPREME COURT OF THE UNITED STATES.

No. ~~100.~~ 45.

JAMES S. DOUGLASS, ET. AL., PLAINTIFFS IN ERROR,

VERSUS

JAMES M. REYNOLDS, ET. AL.

IN ERROR TO THE DISTRICT COURT UNITED STATES FOR MISSISSIPPI.

UNITED STATES OF AMERICA, ss.—*The President of the United States, to the Judge of the district court of the United States for the district of Mississippi, greeting*:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between James M. Reynolds, John B. Byrne, and William Ferriday, merchants, trading under the style and firm of Reynolds, Byrne, & Company, plaintiffs, and James S. Douglass, John G. Singleton and Thomas Going, a manifest error hath happened, to the great damage of the said James S. Douglass, John G. Singleton, and Thomas Going, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the *Supreme Court of the United States*, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness, the honorable John Marshall, Chief Justice of the said Supreme Court, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States the fifty-fifth.

WM. BURNS, [L. S.]
Clerk of Dist. C. of U. S. Miss. Dist.

Issued 18th April, 1831.

DISTRICT OF MISSISSIPPI, ss.—*The United States of America to the Marshal of said district, greeting:*

We command you to cite James M. Reynolds, John B. Byrne, and William Ferriday, merchants, trading under the style and firm of Reynolds, Byrne, & Co., to be and appear before the Supreme Court of the United

States, at a court to be held at the city of Washington, on the second Monday of January next, to show cause, if any they have, why the judgment of the district court of the United States for the Mississippi district, which was rendered at the January term thereof, A. D. 1831, in favor of the said Reynolds, Byrne, & Co., against James S. Douglass, John G. Singleton, and Thomas Going, should not be reversed. And herein fail not; and have you then there this citation.

PETER RANDOLPH, [L. S.]
District Judge, Miss. Dist.

April 18th, 1831.

Service acknowledged April 18, 1831.

R. J. WALKER,
Att'y. of Reynolds, Byrne, & Co.

REYNOLDS, BYRNE & Co., }
vs.
JAMES S. DOUGLASS, et. al. }

Pleas before the honorable Peter Randolph, District Judge of the United States, in and for the district of Mississippi.

At a district court, began and held, at the city of Natchez, for the district aforesaid, on the fourth Monday in January, in the year of our Lord one thousand eight hundred and thirty-one:

Preamble.

Be it remembered, that heretofore, to wit, on the eighteenth day of March, in the year of our Lord one thousand eight hundred and thirty, came James M. Reynolds, John B. Byrne, and William Ferriday, merchants, trading in copartnership, in and under the name of Reynolds, Byrne, & Co., by D. S. & R. J. Walker, and McMurran & Buckner, their attorneys, into the clerk's office of the court aforesaid, and ordered out the following writ of *summons ad respondendum* against James S. Douglass, John G. Singleton, and Thomas Going; which is in the words and figures, to wit:

Writ.

DISTRICT OF MISSISSIPPI, ss.—*The United States of America, to the Marshal of the Mississippi district, greeting:*

We command you, without delay, to summon James S. Douglass, John G. Singleton, and Thomas Going, all citizens of the state of Mississippi, to be and appear before the judge of the district court of the United States, at a court to be holden at the city of Natchez, for the district aforesaid, on the first Monday in April next, to answer to James M. Reynolds, a citizen of the State of Louisiana, John B. Byrne, and William Ferriday, the two latter aliens, subjects of his British Majesty, George the Fourth, King of England, &c., merchants, trading in copartnership in and under the name of Reynolds, Byrne, & Co., of a plea of trespass on the case, to their damage sixteen thousand dollars; and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default. And have then there this writ.

Witness the honorable Peter Randolph, judge of said district court, the eighteenth day of March, A. D. 1830, and of the independence of the United States, the fifty-fourth.

WM. BURNS, *Clerk.* [L. S.]

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Marshal's return.

Upon which said writ, the marshal of the district, to whom the same was directed, by his deputies, made the following return, to wit: "Summoned, by copy left at the usual place of residence of James S. Douglass, defendant, with Thomas Evans, March 20th, 1830.

WM. W. NALEY,
Deputy Marshal.

"Summoned, by copies left, at the residence of defendants, John Singleton and Thomas Going, 26th March, 1830.

JAS. GREEN, *D. M.*

Afterwards, to wit, on the said eighteenth day of March, in the year of our Lord one thousand eight hundred and thirty, the said plaintiffs, by their attorneys aforesaid, filed their bill herein, against the said defendants, which is in the words and figures following, to wit:

District Court, April term, 1830.

THE UNITED STATES OF AMERICA, *the District of Mississippi.*

James S. Douglass, John G. Singleton, and Thomas Going, all citizens of the State of Mississippi, were summoned to answer unto James M Reynolds, a citizen of the State of Louisiana, John B. Byrne, and William Ferriday, the latter two being aliens, subjects of his British Majesty, George the Fourth, King of England, &c., merchants, trading in copartnership, in and under the name of Reynolds, Byrne, & Co., of a plea of trespass upon the case.

Narr.

For that, whereas, heretofore, to wit, on the day of December, eighteen hundred and twenty-seven, at Port Gibson, to wit, at the district aforesaid, in consideration that their friend, Chester Haring, to assist in business, might require their (the plaintiffs') aid, from time to time, either by acceptance or endorsement of his paper, or advances in cash, in order to save them (the said plaintiffs meaning,) from harm, by so doing, they, the said defendants then and there undertook to guaranty, and did thereby bind themselves, severally and jointly, to be responsible to them, (the said plaintiffs meaning,) at any time, for a sum not exceeding eight thousand dollars, should the said Chester Haring fail to do so, which said undertaking, agreement or letter of credit, was in writing, signed by the said defendants, their own proper handwriting being thereto subscribed, and addressed and directed to the said plaintiffs, by the name and addition of Messrs. Reynolds, Byrne, & Co., to wit, on the said day of December, A. D. 1827, at Port Gibson, to wit, at the district aforesaid: and the said plaintiffs aver, that they, confiding in the said undertaking, agreement, and guarantee of the said defendants, which was shown and delivered to them, the said plaintiffs, by the said Chester Haring, did, afterwards, to wit, on the day of A. D. 1828, and at other times between that day and the commencement of this suit, aid the said Chester Haring, by acceptance and endorsement of his paper, and did then, and there, at his request, and on the faith of said letter of credit, accept and endorse the draughts or paper of the said Chester Haring, to a large amount, to wit, to the sum of eight thousand dollars, upon certain terms, and payable at the times expressed in said draughts and paper of the said Chester; which said draughts and paper of the said Chester Haring, so accepted and endorsed by the plaintiffs aforesaid, they, the

Narr.

said plaintiffs became liable to pay, and in consequence of their said acceptances and endorsements, for and on account of the said Chester Haring, as aforesaid, did take up, pay, and discharge the same, at the maturity thereof, to wit, on the day of A. D. 182 , to wit, at the district aforesaid; and although the time for the payment of the said paper, so endorsed and accepted, by said plaintiffs, for and on account of the said Chester Haring, as aforesaid, has long since elapsed, and the same have been paid by the plaintiffs, as aforesaid, yet the said Chester Haring has wholly failed to discharge or pay the same, or any part thereof, but to do so, or to pay the said plaintiffs the aforesaid sum of eight thousand dollars, for their acceptances, endorsements, and payments of his paper as aforesaid, or any part thereof, although often requested, has hitherto wholly failed, neglected, and refused, to wit, at the district aforesaid, to wit: on the day of A. D. 182 ; of all which premises the said defendants had notice.

Yet the said defendants, not regarding their said agreement, promise and undertaking, but contriving and fraudulently intending to deceive the said plaintiffs, have not accounted to the said plaintiffs, or paid to them the said sum of eight thousand dollars, for their said acceptance and endorsements of said Chester Haring's paper, as aforesaid, or any part thereof; although they, the said defendants, afterwards, to wit, on the day of A. D. eighteen hundred and twenty nine, to wit, at the district aforesaid, *was* requested by the said plaintiffs to do so. And the said sum of eight thousand dollars still remains due and wholly unpaid to the said plaintiffs, to wit: at the district aforesaid.

And whereas, also, afterwards, to wit, on the first day of January, A. D. 1830, to wit, at the district aforesaid, the said defendants were in-
Narr. debted to the said plaintiffs in the further sum of eight thousand dollars, for so much money lent and advanced to the said defendants by the said plaintiffs, at said defendants' special instance and request; and, also, in the further sum of eight thousand dollars, for so much money before that time had and received, by the said defendants, to and for the use of the said plaintiffs: and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, to wit, at the district aforesaid, undertook and then and there, faithfully promised the said plaintiffs, to pay them the said sums of money in this count mentioned, when thereunto afterwards requested; yet the said defendants, although often requested so to do, have not paid the aforesaid several sums of money, or either or any part thereof, but to pay the same to the plaintiffs have hitherto wholly refused, and still do refuse, to the damage of said plaintiffs of sixteen thousand dollars; and therefore they sue, &c.

D. S. & R. J. WALKER, &
McMURRAN & BUCKNER,
Plaintiffs' Attorneys.

And the said defendants, by their attorney, come and defend the wrong and injury, &c., and for plea say that the plaintiffs, their action aforesaid to have and maintain, ought not, because they say that they did not promise and assume, in manner and form as the said plaintiffs, in their declaration, have alleged, and of this they put themselves upon the country.

By WHITING, *Attorney.*

And plaintiffs do the like.

McMURRAN, BUCKNER, & WALKERS.

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And, for a further plea in this behalf, by leave of the court first had, &c., the defendants say, that the plaintiffs ought not to have and maintain their action against them, because they say that the said Chester Haring fully paid and satisfied the said plaintiffs for all sums of money advanced him under the said letter of credit, and for all acceptances, endorsements, or liabilities, made or incurred, for and on account of the said letter of credit, to wit, on the day of 182 at in the district aforesaid; and this they are ready to verify. Wherefore, &c.

WHITING, *Att'y for def'ts.*

And, for replication to second plea, by said defendants above pleaded, said plaintiffs say, that they ought not to be barred from having and maintaining their aforesaid action against them, because they say that said Chester Haring did not, as alleged in said second plea, pay and satisfy all sums of money advanced him under said letter of credit, and for all acceptances, and endorsements, and liabilities, made and incurred, for and on account of said letter of credit, as alleged in said letter of credit, and of this he puts himself upon the country, &c.

WALKERS, McM. & B. *for pl'ffs.*

And the defendants do the like.

WHITING, *for defendants.*

The plaintiffs will take notice, that the defendants will offer to prove on the trial of this cause, by showing a payment of five promissory notes, all drawn by Chester Haring to Daniel Greenleaf, and by him endorsed to the said plaintiffs, the nett proceeds of which, after they were discounted, amounting to $, were received by said plaintiffs in payment of their account against said Haring. The notes as follows:

1 note, drawn by Chester Haring, dated 1st May, 1829, payable to order of Daniel Greenleaf, and endorsed by him, and due 20th November, 1829.					$4,000
1 note, same drawer, date, endorser, and due 20th Dec. 1829,					4,500
1	do.	"	"	" 20th Jan'y, 1830,	5,500
1	do.	"	"	" 20th Feb'y, "	5,500
1	do.	"	"	" 10th March, "	5,500
					$25,000

They will also offer in evidence, on the part of defendants, the accounts herewith filed.

Afterwards, to wit, at the said term of the court last aforesaid, came the parties aforesaid, by their respective attorneys aforesaid; and this cause was then legally continued at the costs of the defendants.

Afterwards, to wit, at the June term of the court aforesaid, began and held at the city of Natchez, in and for the district of Mississippi, on the fourth Monday of June, in the year of our Lord one thousand eight hundred and thirty, came the parties aforesaid, by their respective attorneys aforesaid; and this cause was then legally continued at the defendants' costs.

Afterwards, to wit, at the January term of the court aforesaid, began and held at the city of Natchez, in and for the district aforesaid, on the fourth Monday of January, in the year of our Lord one thousand eight hundred and thirty-one, came the parties aforesaid; by their respective attorneys aforesaid, and the marshal of the district aforesaid, having summoned

certain good and lawful men of his district, according to the directions of the statute, in such case made and provided, to be and appear before the judge of the district aforesaid, at the term of the court last aforesaid, by whom and so forth, and whom neither and so forth, to recognise, and so forth, because, and so forth, the same day is given to the parties aforesaid, then, and so forth. At which term of the court last aforesaid, the jurors of the jury, of which mention is above made, being called, certain of them came, to wit: "William Griffin, Samuel Barker, John Foster, Archibald Cameron, Charles H. Flowers, Daniel Sillers, James Shodgrass, Andrew Single, James Coner, William G. Vanse, Daniel Sullivan, and Samuel Bullin," who being empannelled, tried and sworn to speak the truth concerning the matters within contained, say, upon their oaths, that the said defendants did undertake and promise, in manner and form, as the said plaintiffs have above thereof complained against them; and they further say, upon their oaths, that the said Chester Haring hath not fully paid and satisfied the said plaintiffs, in manner and form as the defendants have within, in that behalf, alleged; and they assess the damages of the said plaintiffs, on occasion of the non performance of the promises and undertaking within mentioned, besides their costs and charges, to eight thousand dollars.

Verdict.

First bill of exceptions by defendants' counsel, No. 1.

Be it remembered, that on the trial of this cause, and before the jury had retired from the bar, the plaintiffs, by their counsel, read in evidence to the jury, as the foundation of their suit, the following instrument of writing, or letter of credit.

1st bill of exceptions.

PORT GIBSON, *Dec.* 1827.

Messrs. REYNOLDS, BYRNE, & Co.

Gent: Our friend, Mr. Chester Haring, to assist him in business, may require your aid, from time to time, either by acceptance or endorsement of his paper, or advances in cash; in order to save you from harm, by so doing, we do hereby bind ourselves, severally and jointly, to be responsible to you, at any time, for a sum not exceeding eight thousand dollars, should the said Chester Haring fail to do so.

Your obt. serv'ts.

JAMES S. DOUGLASS,
JOHN G. SINGLETON,
THOMAS GOING.

The plaintiffs, by their counsel, read in evidence also, the following eight bills of exchange.

A.

$2,000. PORT GIBSON, *5th January*, 1828.

Sixty days after sight of this first of exchange, (second unpaid,) pay to the order of C. Haring two thousand dollars, for value received, which place to account.

Your obedient servant,
CHESTER HARING.

To Messrs. REYNOLDS, BYRNE, & Co., *New Orleans.*

10th January, 1828. Reynolds, Byrne, & Co., by Hugh Bell.

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$1.000 PORT GIBSON, *February 1st*, 1828.

Sixty days after sight of this first of exchange, (second unpaid,) pay to order of Ralph Regan, Esq. one thousand dollars, for value received, which place to account.

Your obedient servant,
CHESTER HARING.

To Messrs. REYNOLDS, BYRNE, & Co., *New Orleans.*

New Orleans, 16th Feb. 1828. Accepted, Reynolds, Byrne, & Co.

C.

$500. PORT GIBSON, 16*th February*, 1828.

Sixty days after sight of this first of exchange, (second unpaid,) pay to the order of C. Haring five hundred dollars, for value received, which place to account.

Your obedient servant,
CHESTER HARING.

To Messrs. REYNOLDS, BYRNE, & Co., *New Orleans.*

25th Februry, 1828. Reynolds, Byrne, & Co., by Hugh Bell.

D.

Exch. for dolls.

$500. PORT GIBSON, 12*th February*, 1828.

Sixty days after sight of this first of exchange, (second unpaid,) pay to the order of Louis Cronly five hundred dollars, for value received, which place to account of

Your obedient servant,
CHESTER HARING.

To REYNOLDS, BYRNE, & Co., *New Orleans.*

New Orleans, 16th Feb. 1828. Accepted, Reynolds, Byrne, & Co.

E.

Exchange dolls. 1000. PORT GIBSON, 16*th February*, 1828.

Sixty days after sight of this first of exchange, (second unpaid,) pay to the order of C. Haring one thousand dollars, for value received, which charge to account of

Your most obedient servant,
CHESTER HARING.

To Messrs. REYNOLDS, BYRNE, & Co., *Merchants, New Orleans.*

25th February, 1828. Reynolds, Byrne, & Co., by Hugh Bell.

F.

$1,000. PORT GIBSON, *Feb'y. 29th*, 1828.

Sixty days after sight of this my first of exchange, (second unpaid,) pay to the order of C Haring one thousand dollars, value received, which charge to account of,

Your obedient servant,
CHESTER HARING.

To Messrs. REYNOLDS, BYRNE, & Co., *Merchants, New Orleans.*

10th March, 1828. Reynolds, Byrne, & Co., by Hugh Bell.

G.

$1,000. PORT GIBSON, *March 9th*, 1828.

Sixty days after sight of this first of exchange, (second unpaid,) pay to the order of C. Haring one thousand dollars, for value received, which place to account of

Your obedient servant,
CHESTER HARING.

To Messrs. REYNOLDS, BYRNE, & Co., *Merchants, New Orleans.*

New Orleans, 19th March, 1828. Accepted, Reynolds, Byrne, & Co.

H.

$1,000. PORT GIBSON, *March 18th*, 1828.

Sixty days after sight of this first of exchange, (second unpaid,) pay to the order of C. Haring one thousand dollars, value received, which place to account of

Your obedient servant,
CHESTER HARING.

To Messrs. REYNOLDS, BYRNE, & Co., *Merchants, New Orleans.*

March 24th, 1828. Reynolds, Byrne, & Co., by Hugh Bell.

K.

I do hereby obligate myself to pay to Reynolds, Byrne & Co., ten per cent. interest, per annum, on any cash balances that may, from time to time, appear against me, in my account with them.

CHESTER HARING.

NEW ORLEANS, 19*th April*, 1828.

And, in connexion therewith, offered in evidence the following depositions of L. F. Herman, Isaac M. Weston, and Hugh Bell.

United States' district court, Mississippi district.

REYNOLDS, BYRNE, & Co.
versus
JAMES S. DOUGLASS, JOHN G. SINGLETON, THOMAS GOING.

The depositions of L. F. Herman, Isaac M. Weston, and Hugh Bell, taken in the city of New Orleans, in the State of Louisiana, on the second day of April, eighteen hundred and thirty, on behalf of the plaintiffs, to be read as evidence in a suit at law depending in the United States' district court for the Mississippi district, in which Reynolds, Byrne, & Co. are plaintiffs, and James S. Douglass, John G. Singleton, and Thomas Going are defendants.

The said L. F. Herman, being of the age of twenty years, and first carefully examined, cautioned, and sworn to testify the whole truth, deposes and says:

That he is in the employ of the plaintiffs. Reynolds, Byrne, & Co., and has been in their counting-house, acting as their clerk, for these four years past: that he knows that a letter of credit for eight thousand dollars was forwarded to Reynolds, Byrne, & Co., the plaintiffs, some time in December, eighteen hundred and twenty-seven, or January, eighteen hundred and twenty-eight, signed by defendants, and in favor of Chester Haring: that he

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has not said letter of credit, it having been forwarded by plaintiffs to their agents in Natchez; that he has seen it, and knows that it was considered by plaintiffs as covering any balance due by Chester Haring to plaintiffs for advances from that time to the extent of eight thousand dollars; and deponent further states, that advances were made, and moneys paid, by said Reynolds, Byrne & Co. on account of said Chester Haring, from the time of receiving said letter of credit, predicated on said letter always protecting them the said plaintiffs, to said amount of eight thousand dollars, whenever said amount or less might be uncovered, and that it was considered in the said counting-house of Reynolds, Byrne & Co., as a continuing letter of credit, and so acted upon by plaintiffs. And being shown the bills annexed, being one for $2,000, marked A; and one for $1,000, marked B; one for $500, marked C; one for $500, marked D; one for $1,000, marked E; one for $1.000, marked F; one for $1,000, marked G; one for $1,000, marked H; says that he knows they were drawn and subscribed by said Chester Haring, as he well knows his hand writing, and that they were accepted and paid by said Reynolds, Byrne & Co., and were payments or responsibilities under said letter of credit, and which was continued afterwards, swelling up in despite of partial payments, to much larger amounts, say at the end of the first six months, or thereabouts, to wit, on the first day of July, 1828, to $13,702 73; the balance owing to Reynolds, Byrne & Co., by Chester Haring, in about twelve months after the receipt of said letter of credit, for eight thousand dollars, say on the first day of January, 1829, was $32,920 57; and on the first day of July, 1829, deponent states that, the balance due by said Chester Haring was, $25,109 57, to the amount of eight thousand dollars, (of all which balances, the plaintiffs certainly considered defendants, James S. Douglass, John G. Singleton, and Thomas Going liable, under their letter of credit,) that amount additional, being always allowed said Haring, because of said guarantee. And being shown the paper marked K, deponent states, that it is signed by Chester Haring aforesaid.

And further deponent saith not.

L. F. HERMAN.

Sworn to before me, 2d April, 1830.

D. PRIEUR, *Mayor.*

The deposition of Isaac M. Weston, taken in the said city of New Orleans, in the said State of Louisiana, on this day, the 2d of April, A. D. 1830, in behalf of the plaintiffs, to be read as evidence in the before recited suit, wherein the before recited parties are plaintiffs and defendants aforesaid.

The said Isaac M. Weston, being of the age of 52 years, and first carefully examined, cautioned, and sworn to testify the whole truth, deposes and says:

That he is in the employ of the plaintiffs, Reynolds, Byrne & Co., and has been in their counting-house, acting as their clerk, since the commencement of their firm; that he knows that a letter of credit, for eight thousand dollars, was forwarded to Reynolds, Byrne & Co., the plaintiffs, some time in December, 1827, or January, 1828, signed by defendants, and in favor of Chester Haring; that he has not said letter of credit, it having been forwarded by plaintiffs to their agents in Natchez; that he knows that it was considered by plaintiffs, as covering any balance due by Chester Haring to plaintiffs, for advances from that time, to the extent of eight thousand dollars;

and deponent further states, that advances were made, and moneys paid by said Reynolds, Byrne & Co., on account of said Chester Haring, from the time of receiving said letter of credit, predicated on said letter always protecting them, the said plaintiffs, to said amount of eight thousand dollars, whenever said amount or less might be uncover'd, (and that it was considered, in the said counting-house of Reynolds, Byrne & Co., as a continuing letter of credit, and so acted upon by said plaintiffs.) And being shown the bills annexed, being one for $2,000, marked A; one for $1,000, marked B; one for $500, marked C; one for $500, marked D; one for $1,000, marked E; one for $1,000, marked F; one for $1,000, marked G; one for $1,000, marked H; says that he knows they were drawn and subscribed by Chester Haring, as he well knows his hand writing, and that they were accepted and paid by Reynolds, Byrne & Co., and were payments or responsibilities under said letter of credit, and which was continued afterwards, swelling up in despite of partial payments, to much larger amounts, say at the end of the first six months, or thereabouts, to wit, on the 1st July, 1828, $13,702 73; the balance owing to Reynolds, Byrne & Co., by Chester Haring in about 12 months, say on the 1st January, 1829, $32,920 57, and on the 1st July, 1829, deponent states that the balances due by Chester Haring was $25,109 57, to the amount of $8,000, (of all which balances the plaintiffs certainly considered defendants liable under their letter of credit,) that amount additional being always allowed said Haring because of said guarantee. And being shown the paper marked K, deponent states, that it is signed by Chester Haring aforesaid.

And further the deponent saith not.

ISAAC M. WESTON.

Sworn to before me the 2d April, 1830.

D. PRIEUR, *Mayor.*

The deposition of Hugh Bell, taken in the said city of New Orleans, in the said State of Louisiana, on this 2d day of April, A. D. 1830, on behalf of the plaintiffs, to be read as evidence in the before recited suit, wherein the before recited parties are plaintiffs and defendants aforesaid.

The said Hugh Bell, being of the age of twenty-seven years, and first carefully examined, cautioned, and sworn to testify the whole truth, and deposes and says:

That he was in the employ of the plaintiffs, Reynolds, Byrne & Co. from the year 1825 up to July, 1829, acting as their clerk; that he knows that a letter of credit for eight thousand dollars, was forwarded to Reynolds, Byrne & Co., the plaintiffs, sometime in Dec'r. 1827, or Jan'y, 1828, signed by defendants, and in favor of Chester Haring; that he has not said letter of credit, it having been forwarded by plaintiffs to their agents at Natchez; that he has seen it, and knows that it was considered by plaintiffs as covering any balance due by C. Haring to plaintiffs for advances from that time to the extent of eight thousand dollars; and deponent further states, that advances were made and moneys paid, by said Reynolds, Byrne & Co., on account of said Chester Haring, from the time of receiving said letter of credit, predicated on said letter always protecting them, the said plaintiffs, to said amount of eight thousand dollars, whenever said amount or less might be uncovered; and that it was considered in said counting-house of Reynolds, Byrne & Co., as a continuing letter of credit, and so acted upon by plff's. And being shown the bills annexed, being *being* one for $2,000, marked

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A; one for $1,000 marked B; one for $1,000 marked E; one for $500 marked C; one for $500 marked D; one for $1,000 marked F; one for $1,000 marked G; one for $1,000 marked H; says that he knows they were drawn and subscribed by Chester Haring, as he well knows his hand writing, and that they were accepted and paid by Reynolds, Byrne & Co., and were payments or responsibilities under said letter of credit, and which was considered afterwards, swelling up in despite of partial payments, to much larger amounts, say at the end of the first six months, or thereabouts, to wit, on the first of July, 1828, to $13,702 73; the balance owing to Reynolds, Byrne & Co., by Chester Haring, in about 12 months, say on the first of January, 1829, to $32,920 57, and on the first of July, 1829, *to* deponent states, that the balance due by Chester Haring was $25,109 57, to the amount of $8,000, (of all which balances, the plaintiffs certainly considered deft's liable under their letter of credit,) that amount additional, being always allowed said Haring because of said guarantee. And being shown the paper marked K, deponent states, that it was signed by Chester Haring afores'd.

And further deponent saith not.

HUGH BELL.

Sworn to before me the 2d April, 1830.

D. PRIEUR, *Mayor*.

STATE OF LOUISIANA, *New Orleans*.

I, Dennis Prieur, mayor of the city of New Orleans, in the State of Louisiana, do certify that the foregoing depositions of L. F. Herman, Isaac M. Weston, and Hugh Bell, were taken before me, at the time and place, and in the suit mentioned in the foregoing caption; that the witnesses were first carefully examined, and sworn, and cautioned to testify the whole truth; that the testimony of each witness was reduced to writing by the witness in my presence, and subscribed by the said witness: that I am not of counsel nor attorney for either party, nor interested in the event of the cause; that the depositions were taken because the deponents live in the city of New Orleans, in the State of Louisiana, more than one hundred miles from the place of holding the court in which said cause is depending: and I do further certify, that no notice was given of the taking of these depositions to the adverse parties, because they do not reside, nor have any attorney known to me, within one hundred miles of taking the deposition.

Given under my hand this second day of April, A. D. 1830.

D. PRIEUR, *Mayor*. [L. S.]

Whereupon the defendants, by their counsel, objected to the admission in evidence, of so much of the deposition of F. L. Herman, as is contained in the following words, to wit, "that it was considered in the said counting-house of Reynolds, Byrne & Co., as a continuing letter of credit." And to the admission in evidence of so much of said deposition, as is contained in the following words, to wit, "of all which balances the plaintiffs certainly considered defendants, James S. Douglass, John G. Singleton, and Thomas Going, liable under their letter of credit." As also to the admission in evidence of the same words, or portion, contained in the depositions of Isaac M. Weston and Hugh Bell, which objections the court overruled, and permitted the said testimony to be read to the jury as evidence of the reliance of plaintiffs upon the letter of credit, to the amount of $8,000, for accept-

ances, payments, advances, and endorsements, made to Chester Haring, to which opinion and decision of the court, the defendants, by their counsel, except.

The plaintiffs, by their counsel, then introduced J. B. Thrasher, as a witness, who gave in evidence to the jury, that about one month previous to the institution of this suit, he was employed by the plaintiffs as their agent, to obtain from the defendants a settlement or payment of the said letter of credit; that, accordingly, in that capacity, he called on the defendants individually, and told them that he was authorised to collect the amount of said letter of guarantee; the witness further stated, that at the same time, when he called on the defendants as above, the debt due by Chester Haring to the plaintiffs, arising out of the same transactions to which the said letter of credit related, was also spoken of; the witness stated that, in the course of the conversation with the defendants, they stated that the debt was just, but the witness could not state that the defendants, or either of them, stated that the particular debt claimed, under the letter of credit was, as against them, a just debt, that is to say, he could not say that the particular words, "the letter of credit was a just debt," were used. The witness further stated, that when the defendants said the debt was just, they also proposed to take up said letter of guarantee, provided the plaintiffs would take in discharge thereof, a transfer from Jas. S. Douglass, of a deed of trust given to him by Daniel Greenleaf.

Deed of Trust, D.

This indenture and deed of trust, made and entered into, this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, between Daniel Greenleaf, of the county of Claiborne, State of Mississippi, of the one part, and James S. Douglass, of the same county and State, of the other part, witnesseth: That the said Daniel Greenleaf, for, and in consideration of the sum of five dollars to him in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath assigned, transferred, set over, and conveyed, and by these presents, hath assigned, transferred, and doth hereby assign, transfer, set over, and convey unto him, the said James S. Douglass, in trust, for the purposes hereinafter particularly set forth and expressed, all debts, claims, and demands, either at law or in equity, due, owing, or to become due from any person, and every persons whatsoever, to him the said Daniel Greenleaf, upon bond, bill, note, or open account, or whether the same be due, or hereafter to become due, from former copartnerships in trade, or whatsoever other way the same is, or hereafter may become due to him, the said Daniel Greenleaf; to have and to hold the said debts, dues, and demands, unto him, the said James S. Douglass, his heirs, executors, or administrators forever. In trust, nevertheless, for the uses, intents and purposes, hereinafter set forth, expressed, limited, and declared, and for no other use, intent, or purpose, whatsoever, that is to say: whereas, C. Haring, James S. Douglass, John G. Singleton, Thomas Going, and Daniel Greenleaf, did, some time in the month of December, 1827, make and sign a letter of credit in favor of the concern of Chester Haring, in which concern the said Daniel Greenleaf, party of the first part, was a partner, to Reynolds, Byrne & Co., of New Orleans, in, and for the sum of eight thousand dollars, the amount whereof, though believed in law to have been liquidated, yet the said Reynolds, Byrne & Co., still demand, and the aforesaid signers may be compelled to pay the same.

And whereas, the said Daniel Greenleaf, party of the first part, did in the month of April, 1829, enter into an indemnifying bond, with John G. Singleton, Samuel H. Montgomery, Elijah L. Clark, and H. E. Watson, as securities, to Chester Haring, late partner in trade of the said Daniel Greenleaf, in the sum of thirty-two thousand dollars, which said bond, the said Chester Haring assigned to the aforesaid Reynolds, Byrne & Co. And, whereas, the aforesaid securities to the said bond, though they believe that they are only bound to indemnify and reimburse him, the said Chester Haring, or his estate in any, and all sums which the said Chester, or his estate now hath been, or hereafter may be compelled to pay, for and in behalf of the aforesaid concern of Chester Haring, as by the tenor of said bond is expressed, may be compelled to pay the whole amount thereof. Now, therefore, it is hereby declared to be the meaning of these presents, and of the parties thereto, that all the debts, dues, and demands as aforesaid, herein and hereby transferred, assigned, set over, and conveyed, are to be held, deemed, and taken, in trust and confidence, in the first place, to raise by collections, and all reasonable means, so much money as will prosecute, further keep alive, and carry on all suits now pending, for the use and benefit of the said Daniel Greenleaf, party of the first part, to wit, Daniel Greenleaf vs. Eue and Jacob Hyland, Daniel Greenleaf, assignee of A. B. Dillard vs. King and Goodall, and A. W. Breedlove vs. Wm. J. Reed, use of said Greenleaf, and others of a similar character, which now are, or hereafter may be instituted, fully paying all costs on same that may accrue; to the end that, if recoveries are had, they may be applied under this deed of trust, as hereinafter provided. And also so much money, as will defend an unjust suit of Joseph Thomas vs. A. W. Breedlove and Daniel Greenleaf, to the end that said unjust suit being defeated, the said Daniel Greenleaf, party of the first part, may hereafter be the better able to provide means wherewith to pay his just debts; and, in the second place, to raise by collections, and all reasonable means, so much money as will be sufficient to indemnify and reimburse the aforesaid signers of the letter of credit as aforesaid, in any sum or sums, with their interests and costs, which they may in consequence of any judicial decision against them as signers of said letter of credit, be compelled to pay, and in all such expenses as they may have to incur in consequence of defending any suit or action which may be brought on said letter of credit against them. And, in the third place, to raise by collections, and all reasonable means, so much money as will be sufficient to indemnify and reimburse the aforesaid signers of the bond as aforesaid, in any sum or sums, with their interests and costs, which they may in consequence of any judicial decision against them as signers and securities to said bond, be compelled to pay, and in all such expenses as they may have to incur, in defending any suit or action which may be brought on said bond against them: Provided, always, nevertheless, that if the aforesaid Reynolds, Byrne & Co. shall, or may at any time before a judicial decision, release, discharge, and exonerate, all the aforesaid signers and securities, saving and excepting Daniel Greenleaf, and will enter into a memorandum of agreement to prosecute and defend the suits in favor of, and against the said Daniel Greenleaf, as aforesaid, and to appropriate any surplus that may be left in their hands, after their own demand is satisfied, to any of the just debts of said Daniel Greenleaf, and after paying all such debts, if any thing remained, to pay it over to the said Daniel Greenleaf, his heirs and assigns: then, and in that case, it is the meaning and intention of these parties, by these presents, that the said James S. Doug-

lass, trustee as aforesaid, shall assign, transfer, set over, and convey, all the debts, dues, and demands, as aforesaid, unto the said Reynolds, Byrne & Co., saving and reserving his reasonable charges for his trouble and expense in this behalf expended as trustee, and saving and excepting the expenses which may be incurred by the signers of the letter of credit, and the bond as aforesaid. And whereas, the said Daniel Greenleaf now stands indebted in other sums of money due to sundry persons, for the payment whereof he is desirous to make all the provisions in his power; it is therefore declared to be the meaning and intention of these presents, that, after the fulfilment of the trusts herein before particularly set forth, the said James S. Douglass, his heirs, executors, or administrators, shall, in the fourth place, out of the moneys collected, or to be collected in virtue of this trust, pay any debt due from him, the said Daniel Greenleaf, to any creditor whatsoever, and shall give any creditor of him, the said Daniel Greenleaf, such preference, as in equity and his own discretion, he may think proper. And, fifthly, should there be any money or debts uncollected remaining in the hands of the said James S. Douglass, after fulfilling the trusts, herein before particularly set forth, that then the said James S. Douglass, his heirs, executors, or administrators, shall pay over and assign such overplus unto him, the said Daniel Greenleaf, his heirs, or assigns.

And the said Daniel Greenleaf, doth moreover, by these presents, nominate, constitute, and appoint him, the said James S. Douglass, his heirs, executors, or administrators, the true and lawful attorney, or attorneys of him, the said Daniel Greenleaf, for the purposes, and to fulfil the trusts herein before specified and declared, in the name of him, the said Daniel Greenleaf, to ask, demand, sue for, recover, and receive, all such sums of money, debts, dues, and demands, of what nature or kind soever they be, either in law or equity, that now are due and owing, or which may hereafter become due to him, the said Daniel Greenleaf, in any manner and way whatsoever, and from all and every person whomsoever, and for the same when received, acquittances to execute, giving to him, the said James S. Douglass, his heirs, executors, or administrators, full power and authority to compromise, as he or they may think proper, all and every dispute which has arisen, or may arise respecting any claim or demand of him, the said Daniel Greenleaf, with any person whatsoever, hereby ratifying and confirming whatsoever the said James S. Douglass, his heirs, executors, or administrators, may lawfully do in the premises.

In witness whereof, the said Daniel Greenleaf, party of the first part, hath hereunto set his hand and seal, the day and year being first above written.

DANIEL GREENLEAF, [SEAL.]

Signed, sealed, and delivered, in the presence of
AMOS WHITING.

STATE OF MISSISSIPPI, *Claiborne county.*

Personally appeared the undersigned, John Robertson, a justice of the peace in and for the county and State aforesaid, Daniel Greenleaf, whose name is signed to the annexed instrument, and who acknowledged that he signed, sealed, and delivered the same, on the day and year therein mentioned, and for the purposes therein contained, as his act and deed.

January 19th, 1830. Given under my hand and seal, the date above written.

JOHN ROBERTSON, *J. P.* [SEAL.]

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Which proposition the plaintiffs, by their said agent, refused. The witness further stated, that he could not say that when the defendants said it was a "just debt," they said it was the debt under the letter of credit that was just, in those words; but, in the same conversation, they spoke of the letter of credit, as also of the debt due by Chester Haring. The witness further stated, that the defendants never promised to pay said letter of credit, or to make any other disposition to meet it, than as stated above; and never acknowledged their liability on said letter of credit, further than what might be collected from the expression, "that the debt was just," when speaking of said letter of credit, and said debt due by said Haring.

The plaintiffs, by their counsel, then introduced Cornelius Haring as a witness, who gave in evidence, that he was intimate with Chester Haring, his brother, now deceased, and acquainted with his account with Reynolds, Byrne & Co., the plaintiffs; that he had repeated conversations with Chester Haring, on the subject of his debt due to the plaintiffs, and that Chester always acknowledged to witness that he was indebted to plaintiffs in account of advances and payments, in a larger amount than that of eight thousand dollars; and that he, Chester, always considered Reynolds, Byrne & Co. secure to the amount of $8,000 by said letter of guarantee; that the acceptances annexed to the depositions of Herman, Weston, and Bell, were included in the aggregate of said Chester's indebtedness; that they were included in the account shown, and that they were not paid. Witness heard the said James S. Douglass say, that he, Douglass, had assigned to him, as an indemnity against his liability on said letter of credit, notes or effects that, at one time, belonged to the concern of Chester Haring, but which, some time before said assignment to him, Douglass, had been transferred to D. Greenleaf, to the amount of $26,000, that $16,000 or $19,000 were good, and could be made perfetly safe in a few weeks, and that he, Douglass, considered himself in consequence of said assignment, perfectly safe.

Witness further stated, that Thomas Going, one of the defendants, stated to witness that he felt perfectly safe as to the payment of the letter of guarantee, as said Douglass had ample funds to secure them all. Witness further stated, that as late as July, A. D. 1830, said Douglass stated to him, that the notes or effects assigned as an indemnity were worth $16,000 or $19,000, witness could not state positively which. Witness stated, on cross examination, that he did not believe said notes or effects were worth $16,000, as stated by Douglass, but believe they were worth at least the amount of the said letter of credit; that Douglass proposed giving up said assigned effects, if the plaintiffs would cancel the letter of guarantee, and also a bond in the penal sum of $32,000, held by plaintiffs, relative to the debt due by Chester Haring, which witness advised the agent of plaintiffs not to do. Witness stated that some of the effects so assigned, had been realized. Witness stated that, in conversing about said guarantee debt, he, Going, would write to the plaintiffs, and let them know that he did not wish to keep them out of the debt.

Witness further stated, that the firm of Chester Haring was composed of the said Chester Haring and Daniel Greenleaf, a dormant partner of the said house; but at what time the partnership commenced, he could not say.

The defendants, by their counsel, then offered, and read in evidence to the jury, the following depositions:

STATE OF LOUISIANA, *City of New Orleans.*

By virtue, and in pursuance of a commission of *dedimus potestatum*, to me directed, from the honorable the district court of the United States for the district of Mississippi, issued in a matter of controversy now pending in said court, wherein Reynolds, Byrne & Co. are plaintiffs, and James S. Douglass, John G. Singleton, and Thomas Going, are defendants, with certain interrogatories and cross interrogatories, to be propounded to Hugh Bell, Henry L. Burnett, Anthony Sloane, and L. F. Herman, all of the city of New Orleans, and their answers thereto, and examination thereon, upon oath, to take in writing, to be read in evidence in said matter of controversy.

I, Greenbury Ridgely Stringer, notary public in and for the parish and city of New Orleans, State of Louisiana aforesaid, on this second day of July, in the year of our Lord one thousand eight hundred and thirty, and fifty-fourth year of the independence of the United States of America, in my notarial office in said city, between the hours of ten o'clock A. M. and three o'clock P. M. did cause to appear before me, the said Hugh Bell, Anthony Sloane, and L. F. Herman, Henry L. Burnett, the other witness being absent from the State, and them having duly examined, cautioned, and sworn on the Holy Evangelist of Almighty God, to declare the truth in the premises, I did propound to them the several interrogatories attached to the said commission, to which they severally answer as follows, to wit:

Hugh Bell, the first witness, answered to the

First interrogatory. Do you know all, or any of the parties named in the above suit? and if so, state all whom you know?

Answer. I do know the plaintiffs, Reynolds, Byrne & Co., with the defendants I am not acquainted.

Second interrogatory. Have you, or have you not, seen a letter of credit, addressed to Reynolds, Byrne & Co., dated 27th Dec., 1827, and signed by C. Haring, James S. Douglass, John G. Singleton, Thomas Going, and Daniel Greenleaf, on behalf, and in favor of Chester Haring; and is not the annexed paper A, a true copy of said letter, as nearly as you can recollect, said letter of credit being for the sum of $8,000?

Answer. The said paper A, is, as nearly as I can recollect, a copy of a letter of credit addressed to the plaintiffs by J. S. Douglass, J. G. Singleton, Thomas Going, on behalf of Chester Haring, but do not recollect of its being signed by C. Haring or Dan'l Greenleaf, said letter of credit being for the sum of $8,000.

Third interrogatory. Do you, or do you not, know that there never was but one letter of credit given by Chester Haring to plff's, and signed by the defendants, and was not that letter signed also by C. Haring and Dan'l Greenleaf, or have you not so understood from the plff's?

Answer. To the best of my knowledge, there never was more than one letter of credit given to the defendants in favor of Chester Haring, to the plaintiffs; at least I do not know, or recollect any to be in possession of R. B. & Co, nor do I think the one alluded to, was signed by C. Haring or Dan'l Greenleaf.

Fourth interrogatory. Do you, or do you not, know that the said letter of credit, on which suit is now brought, was surrendered, on or about the 1st of May, 1829, to Chester Haring or to C. Haring, one of the signers thereof, as being cancelled; and the signers thereof, intended by such surrender, to be released by Reynolds, Byrne & Co. and have you not heard

said Reynolds, Byrne & Co., say, or acknowledge in words, or in writing, that such disposition was made of said letter of credit before the death of the said Chester Haring? and, if so, state if such original letter of credit is now in existence. And if in the possession of plaintiffs', or their counsel, at this time, state if you know how and when it came a second time into their possession. And herein answer fully.

Answer. I do not know, or ever understood, that the said letter of credit for $8,000 was surrendered or cancelled to any one. I am informed that it is now in the hands of Reynolds, Ferriday & Co., or their counsel.

Fifth interrogatory. Is, or is not, the paper B, purporting to be an account current of Chester Haring with Reynolds, Byrne & Co., up to the 1st of May, 1828, written in the handwriting of the book-keeper, or one of the authorized clerks of said Reynolds, Byrne & Co.? and, if so, state the name of said clerk or book-keeper? And state if it is not the usual practice with said Reynolds, Byrne & Co. to send off accounts current, made out by their book-keeper, without singing the same?

Answer. The paper B is Chester Haring's account current with Reynolds, Byrne & Co. up to 1st May, 1828, and made out by Isaac M. Weston, book-keeper of the said Reynolds, Byrne & Co. It is usual for Reynolds, Byrne & Co. to send accounts, made out from their books, without signing the same.

Sixth Interrogatory. Are, or are not, two papers C and D true accounts of sales from Reynolds, Byrne & Co. to Chester Haring, showing an aggregate amount in their hands to go to his credit in account in the sum of $2,652$\frac{12}{100}$? And is not the item of $2,647$\frac{12}{100}$, in the account current paper B, to the credit of Chester Haring, meant and intended for the aggregate amount of said two papers C and D?

Answer. The papers C and D are account sales from Reynolds, Byrne & Co., account Chester Haring, the aggregate amount of *of* which is $2,652 12. And the item of $2,647 12, in the account paper B, to the credit of Chester Haring, was intended for the aggregate amount of said two papers C and D.

Seventh Interrogatory. Are, or are not, the papers E and F true accounts of sales from plaintiffs to Chester Haring, showing an aggregate amount in their hands to go to his credit, in account, in the sum of 929\frac{62}{100}$? And is not the item of 929\frac{62}{100}$, at the credit of said Chester Haring, in the account current paper B, intended for the aggregate amount of said two papers E and F?

Answer. The papers E and F are account sales from plaintiffs to Chester Haring, and show an aggregate amount of $929 62. And the items in paper B, of $929 62, at the credit of Chester Haring, is intended for the aggregate amount of said two papers E and F.

Eighth interrogatory. Is, or is not, paper G an original paper as furnished by plaintiffs to Chester Haring, showing advances received by them on his cotton, to go to his credit in account in the sums of 764\frac{44}{100}$, and $1,552$\frac{77}{100}$? And are not the items of 764\frac{44}{100}$, and $1,552$\frac{77}{100}$, at the credit of said Chester Haring, in the account current paper B, intended for the aggregate amount of said paper G?

Answer. The paper G is an original paper, furnished by plaintiffs to Chester Haring, showing advances received by them on cotton shipped to go to his credit in the sums of $764 44, and $1,552 77. And the items

in paper B, of $764 44, and $1,552 77, are intended for the aggregate sum of paper G.

Ninth interrogatory. Are, or are not, the papers H and I true account of sales from plaintiffs to Chester Haring, showing an aggregate amount in their hands to go to his credit in account in the sum of $360 96/100? And is not the item of $360 96/100, at the credit of said Chester Haring in the account current paper B, intended for the aggregate amount of said two papers H and I?

Answer. The papers H and I are true account sales from plaintiffs to Chester Haring, showing the sum of $360 96. And the item $360 96, at the credit of said Chester Haring in account paper B, is intended for the aggregate amount of said papers H and I.

Tenth interrogatory. Are, or are not, the papers J and K true accounts of sales from plaintiffs to Chester Haring, showing an aggregate amount in their hands to go to his credit in account in the sum of $280 44/100? And is not the item of $280 44/100, at the credit of said Chester Haring in the account current paper B, intended for the aggregate amount of said two papers J and K?

Answer. The papers J and K are true account sales from plaintiffs to Chester Haring, showing together an amount of $280 44, and the same is at his credit in paper B, and intended for the aggregate amount of said two papers J and K.

Eleventh interrogatory. Are, ar are not, the papers L and M true accounts of sales from plaintiffs to Chester Haring, showing an aggregate amount in their hands to go to his credit in account in the sum of $1,105 20/100? And is not the item of $1,105 20/100, at the credit of Chester Haring in the account current B, intended for the aggregate amount of said two papers L and M?

Answer. The papers L and M are true account sales from plaintiffs to Chester Haring, showing together an amount of $1,105 20, and the same is at his credit in paper B, and intended for the aggregate amount of papers L and M.

Twelfth interrogatory. Is, or is not, the paper N a true account of sales from plaintiffs to Chester Haring, showing an amount in their hands to go to his credit in account in the sum of $198 61/100? And is not the item of $198 61/100, at the credit of said Haring in the account current paper B, intended for the same amount of said paper N?

Answer. The paper N is a true account sales from plaintiffs to Chester Haring, showing an amount of $198 61, and the same is at his credit in paper B, and intended for the amount of said paper N?

Thirteenth interrogatory. Is, or is not, the paper O, purporting to be an account current of Chester Haring with Reynolds, Byrne & Co., up to 1st of August, 1828, written in the handwriting of the book-keeper, or one of the authorized clerks of the said Reynolds, Byrne & Co.? and, if so, state if it is not the usual practice with said Reynolds, Byrne & Co., to send off accounts current made out by their book-keeper without signing the same.

Answer. The paper O is a true account current of Chester Haring with plaintiffs up to the 1st August, 1828, and is written by Isaac M. Weston, book-keeper of Reynolds, Byrne & Co. It is usual with Reynolds, Byrne & Co. to send off accounts current without being signed by them.

Fourteenth interrogatory. Is, or is not, the paper P a true account of sales from plaintiffs to Chester Haring, showing an amount in their hands

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to go to his credit in account in the sum of $671 96/100? And is not the item of $671 96/100, at the credit of said Haring in the account current paper O, intended for the same amount of said paper P?

Answer. The paper P is a true account sales from plaintiffs to Chester Haring, on amount of $671 96, and the same is at his credit in account paper O.

Fifteenth interrogatory. Are, or are not, the papers Q, R, S, T, U, true accounts of sales from plaintiffs to Chester Haring, showing an aggregate amount in their hands to go to his credit in account in the sum of $6,277 49/100, at the credit of Chester Haring in the account current paper O, intended for the aggregate amount of said five papers Q, R, S, T, U?

Answer. The papers Q, R, S, T, U, are true account sales from plaintiffs to Chester Haring, showing together an amount of $6,277 49, and the same is at his credit in account paper O, and is intended for the aggregate amount of said five papers Q, R, S, T, U.

Sixteenth interrogatory. Are, or are not, the papers V, W, X, Y, Z, *a a*, and *b b*, true accounts of sales from Reynolds, Byrne & Co., to Chester Haring, showing an aggregate amount in their hands to go to his credit in account in the sum of $1841 01/100? And is not the item $1,841 01/100, at the credit of said Haring in the account current paper O, intended for the aggregate amount of said papers V, W, X, Y, Z, *a a*, and *b b*?

Answer. The papers V, W, X, Y, Z, *a a*, and *b b*, are true accounts of sales from plaintiffs to Chester Haring, showing together an amount of $1,841 01; and the same is at his credit in account paper O, and is intended for the aggregate amount of said seven papers V, W, X, Y, Z, *a a* and *b b*.

Seventeenth interrogatory. Are, or are not, the papers *c c* and *d d* true accounts of sales from plaintiffs to Chester Haring, showing the sums of $204 36/100? And $224 82/100, to the credit of said Haring in the account current paper O, intended for the amounts of said 2 papers *c c* and *d d*?

Answer. The papers *c c* and *d d* are true accounts of sales from plaintiffs to Chester Haring, showing the sums of $204 36, and $224 82, in their hands to go to his credit in account; and the items of $204 36, and 224 82, at the credit of said Haring in the account current paper O, are intended for the sums of said two papers *c c* and *d d*.

Eighteenth interrogatory Is, ~~or is not~~, the paper *e e* a true statement of a further sum of $165 25/100 in hands of plaintiffs for Chester Haring, and to go to his credit in account current? And is not the item of $165 25/100, to the credit of said Haring in the account current paper O, intended for the amount of said paper *e e*?

Answer. The paper *e e* is a true statement of a further sum of $165 25 to go to the credit of Chester Haring, and the sum has gone to his credit as appears in paper O.

Nineteenth interrogatory. Do you, or do you not, know that, on or about the 20th of May, 1828, plaintiffs received from Chester Haring a remittance in cash by a check on the United States' Bank in the sum of $3,500? And is not the item of $3,500 to the credit of said Haring in the account current paper O, intended for the amount so remitted by Haring, and received by plaintiffs?

Answer. On or about the 20th May, 1828, plaintiffs did receive from Chester Haring a check on the Bank of the United States for $3,500, and the same is at his credit, which more fully appears by his account paper O.

Twentieth interrogatory. Do, or do you not, know that papers B and O, purporting to be accounts current of Chester Haring with Reynolds, Byrne & Co., are true transcripts from the books of said plaintiffs?

Answer. I do know that the papers B and O are true transcripts of Chester Harings' account from the books of Reynolds, Byrne & Co.

Twenty first interrogatory. Do you, or do you not, know that, in the winter of 1828, and spring of 1829, the said Chester Haring consigned to the plaintiffs, near about 1,000 bales of cotton, and that the same was sold by them for his account, and the proceeds thereof passed to his credit in a further account current, which was continued after the account current paper O?

Answer. Chester Haring did ship in the winter of 1828, and spring of 1829, from 900 to 1,000 bales of cotton to plaintiffs, and the same was sold by them, and passed to his credit at subsequent dates to account rendered on 1st August, 1828, called paper O.

Twenty-second interrogatory. Do you know any thing more which may be material for the defendants? If so, state the same as fully as if you had been particularly required herein to do so.

Answer. I do not recollect any thing further material for the defendants.

And the said Hugh Bell further answers to the 1st cross interrogatory. Have you, or either of you, or have you not, ever seen the letter of credit upon which the above named suit has been instituted, being a letter of credit in favor of the late Chester Haring, directed to Reynolds, Byrne & Co., and signed by James S. Douglass, Thomas Going, and John G. Singleton? And do you, or do you not, know that said Reynolds, Byrne & Co., always looked upon said letter of credit, in this cross interrogatory mentioned, as a standing and continuing security for the sum of eight thousand dollars at at any and at all times? State fully.

Answer. I have seen the letter of credit upon which the above suit is instituted for $8,000, signed by the above defendants; and I do know that the said letter of credit was always looked upon, and considered by plaintiffs, as a standing and lasting security to them for said amount should the said Chester Haring fail to make good the amounts due them.

2d cross interrogatory. Do you, or do you not, know that said letter of credit, mentioned in the first cross interrogatory, has remained in the possession of said plaintiffs since it was delivered by said Chester to them shortly after the date thereof, without ever having been cancelled or delivered up in any way? And did, or did not, said Reynolds, Byrne & Co., always consider themselves secured by said letter of credit in eight thousand dollars? and make advances accordingly, from time to time, on the strength and faith of it?

Answer. I do know that the letter of credit mentioned in the first cross interrogatory, has remained in the possession of said plaintiffs since it was delivered to them, which was shortly after the date thereof, without ever having been cancelled or delivered up in any way, until, as I am informed, it was sent a short time ago to Messrs. Reynolds, Ferriday & Co., Natchez, to recover the amount. Reynolds, Byrne & Co., always considered themselves secured, by said letter of credit, in the sum of eight thousand dollars; and did make advances on the strength and faith of the same.

3d cross interrogatory. Do you, or do you not, know the amount due by Chester Haring to said Reynolds, Byrne & Co. on or about the first day of May, 1829? if you do, state the amount. And do you, or do you not,

know, that, at that time, there were dealings and transactions abroad between said firms, the result of which was not then known, which brought said Chester Haring still more largely in debt? If so, state fully their dealings and transactions, and what additional sum became due by said Chester Haring to said Reynolds, Byrne & Co.

Answer. The late Chester Haring was indebted to plaintiffs, on the first day of May, 1829, in the sum of $22,573 23. And I do know positively that there were dealings and transactions outstanding, principally cotton shipments abroad, on account of the said Chester Haring, of the result I cannot speak, having left their employ previous to their being closed.

4th cross interrogatory. If you can, please state the amount due by said firm of Chester Haring to Reynolds, Byrne & Co., on or about the first day of April, A. D. 1830, or thereabouts.

Answer. At this time, say 1st April, 1830, deponent is not in their employ, but their books show indebted to them about $27,747 99, exclusive of interest since the 13th March, 1830.

5th cross interrogatory. Do, or do not, papers D, E, and F, contain a statement of the weights, valuation, and charges, on the seventy-eight bales of cotton therein mentioned, which were shipped to Havre on account of the owner? And is, or is not, the owner accountable for any deficiency between said nett amounts as contained in said papers, and the nett proceeds of the sales thereof in Havre?

Answer. The papers D, E, and F, contain a statement of the weights, valuation, and charges, on the seventy-eight bales of cotton therein mentioned, which were shipped to Havre on account of the owner; and said owner or shipper is always accountable to the consignee for any deficiency where such exists, between proceeds of sales, and advances made, including exchange, interest, &c.

6th cross interrogatory. Was, or was not, the shipment of fifty-seven bales of cotton to Liverpool, referred to in paper G, on the same footing as those contained in D, E, and F, the owner being accountable for any deficiency?

Answer. I give for answer the same as to the 5th interrogatory, the owner being considered invariably accountable for all loss.

7th cross interrogatory. Do you know any thing further material for plaintiffs in this cause? If so, please state the same fully, and at large, under this general interrogatory.

Answer. Nothing further. And hereunto signs his name.

HUGH BELL.

Anthony Sloane, the second witness. Answer to the

First interrogatory. Do you know all or any of the parties named in the above suit? and, if so, state all whom you know.

Answer. I am not personally acquainted with the defendants, but know plaintiffs well.

To the 2d, 3d, and 4th interrogatories, the witness answers—

Having been a short time in the employment of the plaintiffs, these documents were not submitted to me, it being the usual course to deposite such instruments in the vault, or iron chest, where I had not access.

To the 5th interrogatory, the witness answers—

The paper B is the account current of Chester Haring with said plaintiffs up to 1st May, 1828, and written by Isaac M. Weston, the book-keeper of said Reynolds, Byrne & Co., who have often forwarded accounts current,

made out from their books, without signing said accounts.

To the 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, interrogatories, the witness answers—

The originals of these documents, of which copies are in the books of the plaintiffs, were not prepared by me; and, to the best of my recollection, I was not in the employment of the plaintiffs when they were prepared, and, therefore, can only answer, generally, that I believe them to be correct, and true vouchers of the transactions to which they relate.

To the 19th, 20th, 21st, interrogatories, the witness answers—

My answers to these interrogatories are the same as to those of the preceding, say interrogatories 6 and 18.

To 22d interrogatory, the witness answers—

I do not recollect any thing further material for the plaintiffs.

And the said Anthony Sloane further answers to the *1st and 2d cross interrogatories*—

Such matters not being connected with my department, as clerk in the service of plaintiffs, I neither know nor recollect any thing touching these matters.

To the 3d cross interrogatory, the witness answers—

The firm of Chester Haring appears, by plaintiffs' books, to be indebted to them in the sum of $\$22{,}573\frac{23}{100}$; and I know positively that there were transactions abroad, consisting chiefly of shipments of cotton, on account and risk of the said Chester Haring.

To the 4th, 5th, and 6th, cross interrogatories, the witness answers—

These matters not being connected with my department in plaintiffs service, I do not know any thing relative to those interrogatories.

To the 7th cross interrogatory, the witness answers—

I do not recollect any thing further material for plaintiffs in this case. And hereunto signs his name.

ANTH'Y SLOANE.

L. F. Herman, the third witness, answers to the

1st interrogatory. I am not personally acquainted with the defendants, but know plaintiffs well.

To the 2d interrogatory, the witness answers—

The said paper A is, as nearly as I recollect, a copy of a letter of credit for $8,000, issued in account, and for the benefit of Chester Haring, and signed by J. S. Douglass, John G. Singleton, and Thomas Going; but I do not think that C. Haring or Daniel Greenleaf were signers thereof.

To the 3d interrogatory, the witness answers—

To the best of my knowledge there never was but one letter of credit given and signed by defendants in favor of Chester Haring, at least, I do not recollect that it ever was in plaintiffs, possession.

To the 4th interrogatory, the witness answers—

The said letter of credit for $8,000 never was surrendered to any one, nor was it ever cancelled; it is now in the hands of Reynolds, Ferriday & Co., or their counsel.

To the 5th interrogatory, the witness answers—

The paper B is the account current of Chester Haring with said plaintiffs up to 1st May, 1828, and written by Isaac M. Weston, the authorized bookkeeper of said Reynolds, Byrne & Co., who have often forwarded accounts current made out from their books, without signing said accounts.

To the 6th interrogatory, the witness answers—

The papers C and D are accounts of sales from plaintiffs to said Chester Haring, the aggregate amount of which is $2,652 12, and the item $2,647 12 cts., in the account current paper B, to the credit of said Haring, was meant and intended for the aggregate amount of said two papers C and D.

To the 7th interrogatory, the witness answers—

The papers E and F are true account sales from plaintiffs to Chester Haring, and show a total amount of $929 62c., and the same at the credit of the said Haring in the account current B, is intended for the total amount of said two papers E and F.

To the 8th interrogatory, the witness answers—

The paper G is an original paper furnished by plaintiffs to Chester Haring, showing sums received as advances on said Haring's cotton, and such to go to his credit in account in the sums of $764 44, and $1,552 77; and the items of $764 44, and $1,552 77, in the account current paper B, are intended for the aggregate sum of paper G.

To the 9th interrogatory, the witness answers—

The papers H and I are true account sales from plaintiffs to said Haring, showing an aggregate amount in their hands to go to his credit in account in the sum of $360 96; and the item of $360 96, at the credit of said C. Haring in the account paper B, is intended for the aggregate amount of said papers H and I.

To the 10th interrogatory, the witness answers—

The papers J and K are true account sales from plaintiffs to said C. Haring, showing an aggregate amount of $280 44 in their hands to go to the credit of Chester Haring in account; and the item of $280 44, at the credit of said Haring in the account current paper B, is intended for the aggregate amount of said two papers J and K.

To the 11th interrogatory, the witness answers—

The papers L and M are true account sales from plaintiffs to Chester Haring, showing an aggregate amount in their hands to go to his credit in account in the sum of $1,105 20; and the item of 1,105 20, at the credit of said Chester Haring in the account current paper B, is intended for the aggregate amount of said two papers L and M.

To the 12th interrogatory, the witness answers—

The paper N is a true account sales from plaintiffs to said Chester Haring, showing an amount in their hands to go to the credit of said Haring in account in the sum of $198 61; and the item of $198 61, at credit of said Haring in the account current paper B, is intended for the amount of said paper N.

To the 13th interrogatory, the witness answers—

The paper O is a true account current of Chester Haring with plaintiffs up to 1st August, 1828, and in the handwriting of Isaac M. Weston, said Reynolds, Byrne & Co.'s clerk. It is usual for said Reynolds, Byrne & Co. to issue accounts current without signing the same.

To the 14th interrogatory, the witness answers—

The paper P is a true account sales from plaintiffs to said Chester Haring, showing an amount in their hands to go to his credit in the sum of $671 96; and the item of $671 96, at the credit of said Haring in the account current paper O, is intended for the said amount of said paper P.

To the 15th interrogatory, the witness answers—

The papers Q, R, S, T, and U, are true account sales from plaintiffs to

said Chester Haring, showing an aggregate amount in their hands to go to his credit in account in the sum of $6,277 49; and the item of 6,277 49, at the credit of said Chester Haring in the account current paper O, is intended for the aggregate amount of said five papers Q, R, S, T, and U.

To the 16th interrogatory, the witness answers—

The papers V, W, X, Y, Z, *a a*, and *b b*, are true account sales from plaintiffs to said Haring, showing an aggregate amount in their hands to go to his credit in account in the sum of $1,841 01; and the item of $1.841 01, at the credit of said Haring in the account current paper O, is intended for the aggregate amount of said seven papers. V, W, X, Y, Z, *a a*, and *b b*.

To the 17th interrogatory, the witness answers—

The papers *c c* and *d d* are true account sales from plaintiffs to said Haring, showing the sums of $204 36, and $224 82, in their hands to go to his credit in account; and the items of $204 36, and 224 82, at the credit of said Haring in the account current paper O, are intended for the amounts of said two papers *c c* and *d d*.

To the 18th interrogatory, the witness answers—

The paper *e e* is a statement of a further sum of $165 25 in the hands of plaintiffs for Chester Haring, and to go to his credit in account; and the item of $165 25, at the credit of said Haring in the account current paper O, is intended for the amount of said paper *c c*.

To the 19th interrogatory, the witness answers—

On or about the 20th May, 1828, plaintiffs received from said Haring a check on the Bank of the United States for $3,500; and the item of $3,500, at the credit of said Haring in the account current paper O, is intended for said amount so remitted by said Haring.

To the 20th interrogatory, the witness answers—

The papers B and O are account current of Chester Haring with plaintiffs, and are true transcripts from the books of said plaintiffs.

To the 21st interrogatory, the witness answers—

In the winter of 1828, and spring of 1829, the said Chester Haring consigned nearly 1,000 bales of cotton to plaintiffs, which was disposed of for his account, and the proceeds thereof passed to his credit in subsequent accounts current, and continued from the accounts currents of paper O.

To the 22d interrogatory, the witness answers—

I do not recollect any thing further material for the defendants.

And the said L. F. Herman further answers to the

1st cross interrogatory. I have seen the letter of credit for $8,000 in favor of Chester Haring, and signed by defendants; and I do know that said letter of credit was always looked upon, and considered by them, the plaintiffs, as a standing and continuing security or guarantee to them in the full sum of $8,000, should said Haring fail to satisfy their claims.

To the 2d cross interrogatory, the witness answers—

Since the said letter of credit for $8,000 was received by plaintiffs, it never was cancelled, nor given up to any one whomsoever by plaintiffs, except to Reynolds, Ferriday & Co., or their counsel; the plaintiffs considering themselves secured at any and at all times by said letter of credit to the full amount of $8,000, made advances to said Haring on the strength and faith of said letter, from time to time, to the full amount of 8,000, and the said Haring enjoyed with plaintiffs a credit which never would have been granted him had they not considered themselves covered to the extent of $8,000 by said letter of credit.

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To the 3d cross interrogatory, the witness answers—

The firm of Chester Haring was indebted to plaintiffs, on the 1st May, 1829, in the sum of $22,573 23. I know positively that there were dealings and transactions abroad, consisting principally of cotton shipments, on said Haring's account, the result of which could not then be known, and is now only partially so.

To the 4th cross interrogatory, the witness answers—

The amount due plaintiffs by said Chester Haring, on the 1st of April, 1830, was $27,747 99, exclusive of interest since the 13th March, 1830.

To the 5th cross interrogatory, the witness answers—

The papers D, E, and F, contain a statement of the weights, valuation, and charges on the seventy eight bales cotton therein mentioned, which were shipped to Havre on account of the owner, and said owner or shipper is always accountable to the consignee for any deficiency, when such exists, between the proceeds of sale and the advances made, including exchange, interest, &c.

To the 6th cross interrogatory, the witness answers—

The shipment of fifty-seven bales cotton, referred to in paper G, was made on the same footing as those contained and alluded to in papers D, E, and F, the owner being invariably accountable for any deficiency or loss.

To the 7th cross interrogatory, the witness answers—

I do not recollect any thing further material for plaintiffs in this case.

And hereunto signs his name.

L. F. HERMAN.

Together with the following accounts.

Paper marked A, *referred to in the foregoing depositions.*

PORT GIBSON, *December* 27, 1829.

Messrs. REYNOLDS, BYRNE & Co.

GENTLEMEN: Our friend Mr. Chester Haring, to assist him in business, may require your aid, from time to time, either by acceptances or endorsements of his paper, or advances in cash. In order to save you from harm by so doing, we do hereby bind ourselves, severally and jointly, to be responsible to you, at any time, for a sum not exceeding eight thousand dollars, should the said Chester Haring fail to do so

Your ob't serv'ts,

C. HARING,
JAMES S. DOUGLASS,
JOHN G. SINGLETON,
THOMAS GOING,
DAN'L GREENLEAF.

The following papers, marked B, C, D, and E, are the papers referred to, and annexed to the foregoing depositions, viz.

PAPER B.

Dr. *Chester Haring, Esqr.*

Dates.	Interest 10 pr. ct. pr. year up to 1st of May, 1828.	Amount.	Due.	Days.	Int'r'st
1827.					
May 7	To endorsement of y'r note our favor payable 8th May, 1828,	$258 77			
	2½ pr ct. for endorsing the above,	6 46			
	Endorsement of y'r note our favor payable 10th May, $713 50				
"	Ditto 4th May, 504 13				
	Ditto 10th Feb., 710 07				
		1927 70	Feb'y 10	81	15 96
	2½ per cent. commissions for endorsing the above - -	48 19			
14	Endorsement of your note our favor payable 10th May, 1828,	250 15			
	2½ pr. ct. for endorsing the above,	5 75			
Sept. 8	Amount of your draft in favor of Israel Loring pa'ble 11th March	500	March 11	51	7 18
Oct'r 29	Ditto in favor of W. R. McAlpine payable 27th December,	346	Dec'r 27	126	12 10
Nov'r 5	Ditto of C. Haring payable 28th December, - - -	611 48	Dec'r 28	125	21 24
17	Ditto of do pa'ble 19 Jan. $3,000	-	Jan'y 19	103	85 83
	Ditto of R. H. McCoy payable 10th January, 500				
		3500	Jan'y 10	112	15 56
23	Endorsement of your note payable 25 Nov., 1828, $1,052 68				
	Acceptance of y'r draft favor of Jos. Chandler pa'ble 21st April, 198	-	April 21	10	54
	Endorsem't of y'r note our favor payable 25 November, 1828, - 527 72				
	Do. 24 Nov'r, " - 622 45				
	Do. 26 Nov'r, " - 575 39				
	Do. 24 August, " - 130 42				
	Do. 25 Nov'r, " - 1,071 46				
	Do. 24 Nov'r, " - 176 89				
	Do. 24 Nov'r, " - 636 22				
	Do. 26 Nov'r, " - 564 21				
		5555 44			
	2½ per cent. for accepting and endorsing the above, $555 44	138 88			
Dec'r 24	Acceptance of your draft favor of W. Bridges, payable 25 Feb'y,	1000	Feb'y 25	66	18 33
28	Paid your draft favor of P. B. Griffin, - - -	376 26	Dec'r 28	125	13 06

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PAPER B.

in account with Reynolds, Byrne & Co. Cr.

Dates.	Interest 10 pr. ct. pr. year up to 1st of May, 1828.	Amount.	Due.	Days.	Inter'st
1827.					
Nov'r 16	By nett proceeds of sales of 14 bales cotton as p'r act. rendered,	$625 93	Nov'r 3	180	31 30
1828.					
Jan'y 7	Do. of 66 do. } 78 bales shipped	2647 12	Dec'r 1 }	152	155 26
10	Do. of 22 do. } to Havre,	929 62	Dec'r 1 }		
Feb'y 5	Received advance on 18 bales cotton shipped p'r Lavinia, £160 and 7½ p'r premium,	764 44	Feb'y 5	86	18 24
	Received advance 39 bales cotton shipped p'r Cashmere, £325 and 7½ p'r premium,	1552 77	Feb'y 5	86	37 10
25	Nett proceeds of sales of 10 bales cotton as p'r account rendered,	360 96	Jan'y 30	92	9 20
March 14	Do. of 8 as per do. -	280 44	Feb'y 8	83	6 46
31	Do. of 32 as per do. -	1105 20	Feb'y 28	63	19 32
	Do. of 6 as per do. -	198 61	Feb'y 25	66	3 62
	Balance of interest - -	28 44			
	Balance of account - -	19515 53			
		$28009 06			$280 50

PAPER B—Continued.

Dr. *Chester Haring, Esqr.*

Dates.	Interest 10 pr. ct. pr. year up to 1st of May, 1828.	Amount.	Due.	Days.	Int'r'st
1828.					
Jan'y 7	Acceptance of your draft favor of Louis Crowley pa'ble 8 March,	$1000	March 8	54	15
10	Do. of C. Haring pa'ble 13 March,	2000	March 13	49	27 22
Feb'y 5	Amount of bill of charges on 18 bales cotton shipped per Lavinia, - - -	54 05			
"	Do on 39 do per Cashmere, -	121 85	Feb'y 5	86	2 90
6	Acceptance of your draft favor of R. Ryan pa'ble 19 Apr. $1,000				
	Do. J. Offatt do. 19 Apr. 500				
	Do. L. Cresly do. 19 Apr. 500	2000	April 19	12	6 66
16	Amount of bill of 2 coils rope and 2 p's bagging, as per account rendered, - -	59 84			
29	Amount of bill of bagging and ropes as per account rendered,	278 99			
"	Acceptance of your draft favor of C Haring payable 28th April, - - $ 500 "	-	April 28	3	42
	Do. do. do. 1,000 "	-	April 28	3	84
	Endorsement of your note in favor payable 16 Jan'y, 1829, 818 79				
	Acceptance of y'r draft favor of C. Haring payable 5th April, 650 "	-	April 5	26	4 70
	Do. 5th April, 500 "	-	April 5	26	3 62
		3468 79			
	2½ per cent. for endorsing a note for $818 79 - - -	20 46			
March 4	Acceptance of your draft favor of C. Haring payable 12th May,	1000			
	Do. of your 2 drafts for 1000 cash, same favor, payable 19th May,	2000			
March 29	Acceptance 2 drafts favor of C. Haring, 1 for $500, and 1 for $1,000, pa'ble 26 May, 1828,	1500	-		28 44
	Balance of interest, - -	$28009 06			280 50

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PAPER B—Continued.

in account with Reynolds, Byrne & Co. Cr.

To balance as per account rendered			$19515 53
4 May, 1828	-	$504 13	
10 May "	-	713 50	
10 May "	-	230 15	
12 May "	-	1000	
19 May "	-	2000	
26 May "	-	1500	
24 Aug. "	-	130 42	
24 Nov'r "	-	622 45	
24 Nov'r "	-	176 89	
24 Nov'r "	-	636 22	
25 Nov'r "	-	1052 68	
25 Nov'r "	-	527 72	
25 Nov'r "	-	1071 46	
26 Nov'r "	-	575 39	
26 Nov'r "	-	564 21	
16 Jan'y 1829	-	818 79	
Due in cash	-	7391 52	
			$19515 53

Chester Haring's books examined and compared with the above, and agree except an error of short credit in this account of 7th January last; short $5 of the amounts rendered in their account sales.

C. Haring's account balanced at - - $19510 53

PAPER MARKED C.

Sales of ten bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r, to Calder, Brock & Co.

RR.	8,	429	2,	360		
	6,	425	4,	375		
	9,	419	7,	385		
	10,	403	3,	409		
	1,	342	5,	385		
					10 bales wei'g 3,932 lbs. at 10c.	$393 20

CHARGES.

Paid freight of 10 bales cotton - - -	$12 50	
Do. drayage and housing do. - - -	2	
Do. weighing - do. - - -	1	
Do. storage - do. - - -	2	
Commission 2½ per on amount sales - -	9 83	
		27 33
		$365 87

E. E. NEW ORLEANS, *4th December*, 1827,

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

PAPER D.

Sales of fifty-six bales cotton, by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r.

By shipment to Paul Poutz, Havre, on account of the owner.

J. Calvit.	22, 388	26, 430	18, 415	1, 401	51, 382	41, 403
	5, 407	17, 390	55, 405	47, 382	9, 387	33, 393
	39, 420	12, 387	40, 388	43, 396	30, 400	50, 399
	10, 367	44, 400	16, 372	34, 393	28, 378	11, 379
	8, 396	37, 393	53, 396	42, 450	27, 424	36, 384
	54, 398	13, 413	35, 406	24, 398	2, 399	31, 390
	56, 403	3, 393	7, 406	32, 408	20, 411	
	15, 395	38, 379	19, 427	4, 384	45, 374	
	52, 396	46, 385	14, 410	48, 376	29, 417	
	23, 401	21, 387	6, 401	49, 409	25, 405	
	3974	3957	4026	3977	3997	2384

56 bales weighing 22,279 lbs. at 11¼ cts. - - - $2,506 38

506

CHARGES.

Paid freight of 56 bales cotton - -	$70	
Do. drayage and housing do. - -	11 20	
Paid weighing - cotton - -	5 60	
Do. storage - - do. - -	11 20	
Do. press bills - do. - -	5 60	
Commissions 2½ per cent. on amount sales -	62 66	
		166 26
		2,340 12
Less insurance and policy		53 87
		$2,286 25

E. E. NEW ORLEANS, 1*st December*, 1827.

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

PAPER MARKED E.

Sales of sixteen bales cotton, by Reynolds, Byrne & Co., on account of Chester Haring, Esqr.

By shipment to Paul Poutz, Havre, on account of the owner.

D. K.	3,	407	1,	422	
	2,	391	15,	427	
	13,	380	11,	405	
	9,	378	7,	411	
	4,	410	6,	416	
	8,	400	16,	398	
	5,	424			
	12,	389			
	14,	373			
	10,	383			
		3935		2474	16 b's w'g 6414 lbs. at 11c. $705 54

CHARGES.

Paid freight of 16 bales cotton - - -	$20	
Do. drayage and housing do. - - -	3 20	
Do. weighing - do. - - -	1 60	
Do. storage - do. - - -	3 20	
Do. press bill - do. - - -	2 20	
Commissions 2½ per cent. amount on sales -	17 64	
		47 84
		$657 70

Nett amount sales -	$657 70
Less insurance and policy	15 40
	$642 30

E. E. NEW ORLEANS, 1*st December*, 1827.

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

PAPER MARKED F.

Sales of six bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r.

By shipment to Paul Poutz, Havre, on account of the owner.

Prime	71, 462		
	73, 475		
	75, 496		
	72, 444		
	74, 476		
	76, 486		
	6 bales cotton weighing 2,839lbs. at 11c.		$312 29
Paid freight of 6 bales cotton - - -		7 50	
Do. drayage and housing do. - - -		1 20	
Do. weighing - do. - - -		60	
Do. storage - do. - - -		1 20	
Do. press bill - do. - - -		90	
Commissions 2½ per cent. on amount sales - -		7 80	
			$293 09
Less insurance and policy			55 77
			$287 32

E. E NEW ORLEANS, 1*st December*, 1827.

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

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PAPER G.

Statement of the shipment of 18 *bales cotton, by the brig Lavinia, Higgins, to Liverpool, on account Chester Haring, Esqr.*

Belt	9	4,088	9½	R	
Hill	4	1,584	9c.	C H	$711 20
BB	5	2,121	8½	1-18	

Statement of the shipment of 39 *bales cotton by the ship Cashmere, Whitney, to Liverpool, on accounnt Chester Haring, Esqr.*

Belt	5	2,212	9¼	R	
Hill	34	14,325	8¾	C H	1,458 04
				19-57	
Add premium to		711 20	-	764 44	
Add do. to		14,58 04	-	1,552 77	

PAPER MARKED H.

Sales of six bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esqr., to Benj'n Story.

S. Randall

105, 429
103, 392
100, 438
101, 421
104, 431
102, 400

—— 6 bales weighing 2,511 lbs. at 9½c. $238 54

CHARGES.

Paid freight of 6 bales cotton - - -	$9	
Do. drayage and housing do. - - -	1 20	
Do. weighing - do. - - -	60	
Do. storage - do. - - -	1 20	
Commissions 2½ per cent. on amount sales -	5 96	
		17 96
		$220 58

E. E. NEW ORLEANS, 30*th January*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

5—100

PAPER MARKED I.

Sales of four bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esqr., to Benj'n Story.

W. W. Lloyd's Gin	84,	400	
	68,	417	
	67,	380	
	66,	426	
		4 bales weighing 1,623lbs. at 9¼c.	$150 13

CHARGES.

Paid freight of 4 bales cotton	$84	
Do. drayage and housing do.	80	
Do. weighing - do.	40	
Do. Storage - do.	80	
Commissions 2½ per cent. on amount sales	3 75	
		9 75
		$140 38

E. E. NEW ORLEANS, 28*th January*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

PAPER MARKED J.

Sales of four bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to J. H. Duckworth.

Shields	45,	431	
	46,	383	
	44,	433	
	41,	428	
		4 bales weighing 1,675 lbs. at 8¾c.	$146 57

CHARGES.

Paid freight of 4 bales cotton	$84	
Do. drayage and housing do.	80	
Do. weighing do.	40	

568

Do. storage - do. - - -	80	
Commissions 2½ per cent. on amount sales -	3 66	
		9 66
		$136 91

E. E. NEW ORLEANS, *8th February*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

PAPER MARKED K.

Sales of four bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to J. H. Duckworth.

IB

29, 423
4, 440
1, 426
3, 415

4 bales weighing 1,704 lbs. at 9c. $153 36

CHARGES.

Paid freight of 4 bales cotton - - -	$4	
Do. drayage and housing do. - - -	81	
Do. weighing - do. - - -	40	
Do. storage - do. - - -	80	
Commissions 2½ per cent. on amount sales -	3 83	
		9 83
		$143 53

E. E. NEW ORLEANS, *28th February*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

PAPER MARKED L.

J. McCaleb—*Sales of three bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r.*

113, 406
115, 440
114, 411

3 bales weighing 1,257 lbs. at 9c. $113 13

CHARGES.

Paid freight of 3 bales cotton - - -	$3 75	
Do. drayage and housing do. - - -	60	
Do. weighing - do. - - -	30	
Do. Storage - do. - - -	60	
Commissions 2½ per cent. on amount sales -	2 83	
		8 08
		$105 05

E. E. NEW ORLEANS, *25th February*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

PAPER MARKED M.

Sales of twenty-nine bales cotton by Reynolds, Byrne & Co., on account Chester Haring, Esq'r., to Landreaux, Vienne & Co.

Elm Flatts	29,	449	9,	418	24,	372
	12,	416	15,	564	23,	365
	7,	373	11,	425	26,	435
	5,	429	17,	416	20,	426
	3,	353	19,	377	27,	384
	18,	381	16,	390	10,	414
	1,	392	6,	402	28,	415
	13,	384	22,	372	14,	418
	4,	330	25,	379	8,	413
	2,	360	15,	384		

29 bales w'g 11,424 lbs. at 9½c. $1,085 28

CHARGES.

Paid freight of 29 bales cotton - - -	$43 50	
Do. drayage and housing do. - - -	5 80	
Do. weighing - do. - - -	2 90	
Do. storage - do. - - -	5 80	
Commissions 2½ per cent. on amount sales -	27 13	
		85 13
		$1,000 15

E. E. NEW ORLEANS, *28th February*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

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PAPER MARKED N.

Sales of six bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to Tayleur, Grimshaw, and Sloane.

JK.	5, 385		
	1, 394		
	6, 380		
	4, 396		
	3, 415		
	2, 413		
	——	6 bales weighing 2,383 lbs. at 9c.	$214 47

CHARGES.

Paid freight of six bales cotton - - -	$7 50	
Do. drayage and housing do. - - -	1 20	
Do. weighing - do. - - -	60	
Do. storage - do. - - -	1 20	
Commissions 2½ per cent. on amount sales - -	5 36	
	——	15 86
		$198 61

E. E. NEW ORLEANS, *25th February*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMAN.

PAPER MARKED O.

Dr. *Chester Haring, Esq'r.,*

Dates.	Interest 10 pr. ct. pr. year up to 1st August, 1828.	Amount.	Due.	Days.	Int'rs't
1828					
	To balance ac. per ac. rendered, interest up to 1st May, 1828, due, viz.				
	Due 4th May, 1828 $ 504 13	-	May 4	89	12 46
	10th May - 713 50				
	10th May - 330 15	-	May 10	83	21 72
	12th May - 1000	-	May 12	81	22 50
	19th May - 2000	-	May 19	74	41 12
	26th May - 1500	-	May 26	67	27 92
	24th August - 130 42	-	Aug'st 24	50	
	24th Nov'r - 622 45	-	Nov'r 24		
	24 " $636 22 and 1 for 176 89 813 11	-	Nov'r 24		
	25 " - 1052 68	-	Nov'r 25		
	25 " - 527 72	-	Nov'r 25		
	25 " - 1071 46	-	Nov'r 25		
	Due 26th $575 39 and 1 for 564 21 - 1139 60	-	Nov'r 26		
	16th Jan'y, 1829 818 79				
	1 May, 1828 7391 52	19515 53	May 1	92	188 46
April 18	Accep'ce of y'r d'ft f'r of F. Offutt, due 16 June, 1828 -	1000	June 16	46	12 78
	Endorse't of your note our favor due 18 April, 1829 212				
	Do. 19 " 989 09				
	Do. 18 " 242 34				
	Do. 19 " 273 45				
	Do. 18 Feb'y " 841 95				
	Do. 19 April " 899 37				
	Do. 19 " " 705 79				
	Do. 18 " " 422 53	4586 52			
	2½ per cent. for endorsing the above 8 notes - -	114 66			
May 7	Acceptance of your draft favor of Haring & Coburne, due 10 July, 1828 - - -	600	July 10	22	3 66
June 6	Loss on 18 bales cotton shipp'd pr Lavinia, £2 10 10, £11 2 9				
	8½ per premium on exchange to remit - - 96	12 25	June 6	56	20
	Accep'ce of your d'ft favor of C. Haring, due 9 August, 1828 -	500			
18	Paid B. Marshall's expenses on 19 boxes of oil stones -	67 01			

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PAPER MARKED O.

in account with Reynolds, Byrne & Co. Cr.

Dates.	Interest at 10 pr. ct. pr. year up to 1st August, 1828.	Amount.	Due.	Days.	Int'r'st
1828.					
April 15	By nett proceeds of sales 18 bales cotton, as per account rendered	$671 96	March 23	131	24 46
30	Do. 168 do. as per do. -	6277 49	March 29	125	217 96
May 1	Do. 54 do. as per do. -	1841 01	April 23	100	51 14
2	Do. of 6 bales cotton, winter, placed to the credit of C. Haring instead of yours, -	204 36	April 23	100	5 68
20	This sum received from you in a check on U. S. Bank, -	3500	May 20	73	70 97
June 18	Balance due on shipment 39 bales cotton per Cashmere, £34 3 & 10d., shipped to Buchanan, Laird & Co. Liverpool - - $151 26				
	8¾ per cent. premium on bill - - 13 29	165 29	June 18	44	2 02

PAPER MARKED O—Continued.

Dr. *Chester Haring, Esq'r.*

Dates.	Interest 10 pr. ct. p'r year up to 1st August, 1828.	Amount.	Due.	Days.	Intr's't
1828					
June 18	Paid freight 19 boxes oil stones	11 19	June 18	44	98
	Paid drayage for do. - -	1			
July 10	Paid balance due on ship't of 78 bales coton shipped per Talisman - - - -	77 26	July 10	22	46
August 1	Paid drayage of oil stones to ship	1 62	August 1		
	Balance of interest - -	-	-	-	41 64
		$26487 04			373 90

1828			
August 1	To balance as per contra -		13515 15
	Due 24 August, 1828	$130 42	
	24 Nov'r, "	1435 56	
	25 Nov'r "	2651 86	
	26 Nov'r "	1139 60	
	16 Jan'y, 1829	818 79	
	18 Feb'y "	841 95	
	18 April "	876 87	
	19 April "	2867 70	
	In cash -	2752 40	
		$13,515 15	

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PAPER MARKED C—Continued.

in account with Reynolds, Byrne & Co. Cr.

Dates.	Interest 10 pr. ct. pr. year up to 1st August, 1828.	Amount.	Due.	Days.	Int'r'st
1828.	Nett proceeds of 6 bales cotton				
August 1	as per account rendered -	224 82	July 24	8	48
	Received average on 78 bales cotton shipped to Paul Poutz				
	in Havre - - -	45 36	April 28	95	1 19
	Balance of interest - -	41 64			
	Balance of account - -	13515 15			
		$26487 04		$	373 90

Examined this account, and made entries to correspond and balance R. B. & Co.'s account on Chester Haring's ledger A, and agreeing with this account, except $5 error against him as per 1st account rendered by R. B. & Co.

D. GREENLEAF.

PAPER MARKED P.

Sales of eighteen bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to And'w Lockhart & Co.

McCay	47,	400	35, 417	44,	414	
	45,	383	38, 383	34,	402	
	39,	376	32, 393	33,	417	
	40,	377	46, 377	42,	405	
	46,	377	41, 387	43,	395	
	51,	375	37, 379	48,	382	

18 bales weighing 7,039 lbs. at 10¼c. - $721 49

CHARGES.

Paid freight of 18 bales cotton - - -	$22 50	
Do. drayage and housing do. - - -	3 60	
Do. weighing - do. - - -	1 80	
Do. storage - do. - - -	3 60	
Commissions 2½ per cent. on amount sales -	18 03	
		49 53
		$671 96

E. E. NEW ORLEANS, 23*d March*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED Q.

Sales of six bales cotton by Reynolds, Byrne & Co., on account Chester Haring, Esq'r., to And'w Lockhart & Co.

T	3,	294
	1,	402
	5,	420
	4,	360
	2,	320
	6,	415

6 bales weighing 2,311 lbs. at 9¾c. - $225 31

CHARGES.

Paid freight of 6 bales cotton - - -	$7 13	
Do. drayage and housing do. - - -	1 20	
Do. weighing - do. - - -	60	
Do. storage - do. - - -	1 20	
Commissions 2½ per cent. on amount sales -	5 63	
		15 76
		$209 55

E. E. NEW ORLEANS, 19*th March*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

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PAPER MARKED R.

Sales of eleven bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to Wm. Nott & Co.

M. Bullock	87,	420	88,	432	
	82,	422	84,	453	
	89,	449	85,	441	
	88,	445	91,	460	
	98,	405	86,	468	
	32,	450			
				11 b's w'g 4,841 lbs. at 11½c.	$556 71

CHARGES.

Paid freight of 11 bales cotton - - -	$16 50	
Do. drayage and housing do. - - -	2 20	
Do. weighing - do. - - -	1 10	
Do. storage - do. - - -	2 20	
Commissions 2½ per cent. on amount sales -	13 92	
		35 92
		$520 79

E. E. NEW ORLEANS, 16*th April*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED S.

Sales of thirty-seven bales cotton by Reynolds, Byrne & Co., on account Chester Haring, Esq'r., to A. Lanfear.

Claiborne	61,	442	83,	425	67,	435	57,	395
	68,	394	75,	395	58,	368	56,	380
	73,	381	63,	395	71,	444	59,	397
	64,	427	89,	360	69,	438	70,	418
	68,	421	77,	326	86,	352	79,	378
	54,	375	88,	362	72,	405	58,	365
	65,	430	85,	395	66,	430	53,	395
	74,	410	84,	390	55,	380		
	60,	370	81,	396	82,	397		
	78,	392	80,	395	76,	370		
		4042		3839		4019		2728

37 bales weighing 14,628 lbs. at 10¼c. $1499 37

CHARGES.

Paid freight of 37 bales cotton - -	$48 50	
Do. drayage and housing do. - - -	7 40	
Do. weighing - do. - - -	3 70	

Paid storage of 37 bales cotton - - -	$ 7 40	
Commissions 2½ per cent. on amount sales -	37 48	
		104 48
		$1394 89

E. E. NEW ORLEANS, *4th April*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED T.

Sales of fifty-two bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to And'w Lockhart & Co.

Claiborne	37, 408	44, 406	26, 400	45, 315	27, 394	50, 362
	31, 434	43, 444	24, 389	12, 358	6, 383	22, 385
	39, 420	52, 434	48, 370	7, 328	5, 417	
	41, 402	32, 422	17, 394	46, 278	3, 415	
	35, 392	40, 420	47, 379	14, 368	4, 428	
	49, 472	42, 368	16, 397	26, 397	1, 400	
	8, 412	35, 424	19, 416	20, 433	29, 418	
	11, 375	38, 445	5, 418	13, 378	28, 430	
	10, 346	36, 427	34, 423	21, 413	2, 401	
	23, 365	13, 350	30, 418	19, 402	51, 366	
	4026	4140	4004	3670	4052	747

52 bales weighing 2,0639 lbs. at 9¾c. - $2012 29

CHARGES.

Paid freight of 52 bales cotton - - -	$72	
Do. drayage and housing do. - - -	10 40	
Do. weighing - do. - - -	5 20	
Do. storage - do. - - -	10 40	
Commissions 2½ per cent. on amount sales -	50 30	
		148 30
		$1863 99

E. E. NEW ORLEANS, *20th March*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

5/3

PAPER MARKED U.

Sales of sixty-two bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r.

To James Nevins:

White	41, 424	38, 403	4, 462	16, 436	3, 470	30, 420	5, 396–	403–	418
	40, 376	37, 408	2, 500	8, 395	9, 447	51, 427	25, 451–	414	
	36, 432	1, 474	22, 426	4, 405	15, 372	11, 421	18, 397–	375	
	39, 424	23, 419	14, 355	7, 396	20, 370	21, 396	21, 380–	451	
	35, 434	17, 395	6, 405	13, 441	26, 428	29, 420	34, 400–	364	

41 bales weighing 17,030 lbs. at 9⅜c. $1639 13

To A. Lockhart & Co.

47,	374	48,	466	43,	412	55,	453
60,	356	44,	428	51,	445	54,	424
58,	424	45,	389	50,	387	46,	411
53,	402	59,	417	57,	417	52,	409
49,	389	42,	437	56,	413	52,	434

21 bales weighing 8,761 lbs. at 9½c. 832 29

$2471 42

CHARGES.

Paid freight of 62 bales cotton - - -	$90 37	
Do. drayage and housing do. - - -	12 40	
Do. weighing - do. - - -	6 20	
Do. storage - do. - - -	12 40	
Commissions 2½ per cent. on amount sales -	61 78	
		$2288 27

E. E. New Orleans, 20*th March*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED V.

Sales of one bale cotton by Reynolds, Byrne & Co., on account Chester Haring, Esq'r., to Bowers, Osborne & Bowers.

No Mark 333

1 bale weighing 333 lbs. at 9¾c. - $32 46

CHARGES.

Paid freight 1 bale cotton - -	$1 50	
Do. drayage and housing do. - -	20	

Paid weighing one bale cotton - - -	10	
Do. storage - do. - - -	20	
Commissions 2½ per cent. on amount sales - -	81	
		$29 65

E. E. NEW ORLEANS, 21*st April*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED W.

Sales of one bale cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to Bowers, Osborne & Bowers.

T 7,315 — 1 bale cotton weighing 215 lbs. at 10½c. $33 07

CHARGES.

Paid freight of one bale cotton - - -	$1 50	
Do. drayage and housing do. - - -	20	
Do. weighing - do. - - -	10	
Do. storage - do. - - -	20	
Commissions 2½ per cent. on amount sales - -	82	
		2 82
		$30 25

E. E. NEW ORLEANS, 21*st April*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED X.

Sales of two bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to Bowers, Osborne & Bowers.

‡ 1, 355 DMM
2, 338 D
— 2 bales weighing 693 lbs. at 9¾c. $67 56

CHARGES.

Paid freight 2 bales cotton -	$3	
Do. Drayage and housing do. - - -	40	
Do. weighing - do. - - -	20	

574

Paid storage 2 bales cotton - - -	40	
Commissions 2½ per cent. on amount sales -	1 68	
		$61 68

E. E. NEW ORLEANS, 21*st April*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED Y.

Sales of two bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esqr., to Bowers, Osborne & Bowers.

W. W. Lloyds. 101, 450
140, 397
—— 2 bales weighing 847 lbs. at 11c. $93 17

CHARGES.

Paid freight of 2 bales cotton - - -	$3	
Do. drayage and housing do. - - -	40	
Do. weighing - do. - - -	20	
Do. storage - do. - - -	40	
Commissions 2½ per cent. on amount sales -	2 33	
		6 33
		$86 84

E. E. NEW ORLEANS, 21*st April*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED Z.

Sales of eleven bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to Bowers, Osborne & Bowers.

JTM 8, 360 11, 336
3, 371 1, 347
2, 342 7, 331
10, 327 5, 360
9, 363
6, 355
4, 365
—— 11 bales w'g 3857 lbs. at 10c. $385 70

CHARGES.

Paid freight of 11 bales cotton - - -	$16 50	
Do. drayage and housing do. - - -	2 20	
Do. weighing - do. - - -	1 10	
Do. storage - do. - - -	2 20	
Commissions 2½ per cent. on amount sales -	9 64	
		31 64
		$354 06

E. E. NEW ORLEANS, 21*st April*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED *a a.*

Sales of eleven bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to Bowers, Osborne & Bowers.

White	67,	450	59,	418	
	69,	400	66,	378	
	65,	376	61,	475	
	62,	370	64,	379	
	68,	408	60,	442	
	63,	362			
				11 bales w'g 4,426 lbs. at 9⅝c.	$426

CHARGES.

Paid freight of 11 bales cotton - - -	$16 50	
Do. drayage and housing do. - - -	2 20	
Do. weighing - do. - - -	1	
Do. Storage - do. - - -	2 20	
Commissions 2½ per cent. on amount sales - -	10 65	
		$393 35

E. E. NEW ORLEANS, 22*d April*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

5775

PAPER MARKED *b b.*

Sales of twenty-six bales cotton, by Reynolds, Byrne & Co., on account of Chester Haring, Esqr., to Bowers, Osborne & Bowers.

Albion	1,	331	14,	342	20,	359	
	22,	391	11,	356	13,	370	
	9,	371	5,	355	15,	343	
	23,	372	12,	357	23,	359	
	2,	345	10,	384	8,	308	
	26,	247	19,	389	4,	345	
	3,	326	7,	354			
	21,	341	24,	363			
	16,	342	6,	356			
	18,	337	17,	346			
		3403		3603		2084	26 bales w'g 9,089 lbs. at 10½ c. $954 34

CHARGES.

Paid freight of 27 bales cotton - - -	$32 50	
Do. drayage and housing do. - - -	5 20	
Do. weighing - do. - - -	2 60	
Do. storage - do. - - -	5 20	
Commissions 2½ per cent. on amount sales - -	23 86	
		69 36
		$884 98

E. E. NEW ORLEANS, 21*st April*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED *c c.*

Sales of six bales cotton, sold by Reynolds, Byrne & Co., on account of Chester Haring, Esqr., to Bowers, Osborne & Bowers.

Watson	4,	383	
	6,	388	
	2,	390	
	3,	356	
	1,	399	
	5,	360	
			6 bales weighing 2,276 lbs. at 9¾ c. $221 91

7—100

CHARGES.

Paid freight of 6 bales cotton - - -	$9	
Do. drayage and housing do. - - -	1 20	
Do. weighing - do. - - -	60	
Do. storage - do. - - -	1 20	
Commissions 2½ per cent. on amount sales -	5 55	
		17 55
		$204 36

E. E. NEW ORLEANS, 21*st April*, 1828.

REYNOLDS, BYRNE & Co.,
per L. F. HERMANN.

PAPER MARKED *d d.*

Sales of six bales cotton by Reynolds, Byrne & Co., on account of Chester Haring, Esq'r., to Bowers, Osborne & Co.

Watson	9,	362	
	8,	321	
	7,	275	
	10,	365	
	12,	395	
	11,	364	
		6 bales—2,092 lbs. at 11½c.	$240 58

CHARGES.

Paid freight of 6 bales cotton - - -	$6 75	
Do. drayage and housing do. - - -	1 20	
Do. weighing do. - - -	60	
Do. storage - do. - - -	1 20	
Commissions 2½ per cent. - - -	6 01	
		$224 82

E. E. NEW ORLEANS, 24*th July*, 1828.

REYNOLDS, BYRNE & Co.,
by HUGH BELL.

PAPER MARKED *e e.*

Dr. *Messrs. Reynolds, Byrne & Co., in account current with Buchanan, Laird & Co.*

Interest calculated to 30th June, 1828.

Mar. 19	To advances on 39 Orleans - -	324		May 21	40	1 15 7	Ap'l 15	By sales per Cashmere - -	361 17 3	July 18	18	18 5 10	
April 1	To interest - -	2 13 5		in red		17 10						as pr. contra,	
	To balance carried down - -	34 3 10										2 15 5	
		£361 17 3				£2 13 5			£361 17 3		£	2 13 5	
							Ap'l 18	By balance brought down -	34 3 10	cash		30 full.	

Error excepted.

LIVERPOOL, 18*th April*, 1828.

BUCHANAN, LAIRD & Co.

By balance as above £34 3 10	$151 96
Per on exchange 8¾ per cent.	13 29
Du Chester Haring, Esq.,	$165 25

NEW ORLEANS, 18*th June*, 1828.

REYNOLDS, BYRNE & Co.,
per HUGH BELL.

For the purpose of proving divers payments made to the plaintiffs by the said Chester Haring, on account of their acceptances, endorsements, and advances, made for said Haring, by them, subsequent to the date of said letter of credit; the defendants also introduced and gave evidence of other payments made by Chester Haring to said plaintiffs, from time to time, since the date of said letter of credit, up to the month of June, A. D. 1830, to a large amount. The defendants, by their counsel, also offered and read in evidence to the jury the following account, and receipt at the foot of the same, viz.

PAPER MARKED G.

Dr. *Chester Haring, Esq'r.*

Dates.	Interest at 10 pr. ct. pr. year to 1st May, 1829.	Amount.	Due.	Days.	Intr's't
1829					
March 9	To amount as per account this date rendered due, viz.				
	On the 9th of March,				
	1829, $4830 49	-	March 7	53	71 10
	" 16 March " 2000	-	March 16	46	25 56
	" 18 March " 250	-	March 18	44	3 06
	" 21 March " 695 47	-	March 21	41	7 92
	" 22 March " 2000	-	March 22	40	22 22
	" 2 April " 6000	-	April 2	29	48 34
	" 13 April " 1000	-	April 13	18	5
	" 15 April " 1098 27	-	April 15	16	4 88
	" 17 April " 331 50	-	April 17	14	1 28
	" 18 April " 876 87	-	April 18	13	3 16
	" 19 April " 2867 70	-	April 19	12	9 54
	" 20 April " 161 21	-	April 20	11	48
	" 22 April " 451 23	-	April 22	9	1 12
	" 23 April " 500	-	April 23	8	1 12
	" 24 April " 533 66	-	April 24	7	1 04
	" 25 April " 500	-	April 25	6	84
	" 27 April " 500	-	April 27	4	56
	" 3 May " 645 63	-	Contra		
	" 24 May " 645 15	25887 18	Contra		
17	Acceptance of your draft favor of C. Haring, due 14th May, 1829	200	Contra		
May 1	Balance of interest - - -	159 84			
		$26247 02			207 22

1829		
May 1	To balance due in cash this date -	$22573 23
	Rec'd, Port Gibson, May 1st, 1829, in part and on acc't of the above account, and interest that may be due thereon, the following notes, to wit,	
	1 note drawn by Chester Haring, dated 1 May, 1829, payable to order of Dan'l Greenleaf, and endorsed by him, and due 20 Nov'r, 1829, for - $4000	
	1 note same drawer, date, endorser, and due 20 Dec., 1829 - 4500	
	1 note same drawer, date, endorser, and due 20th Jan'y, 1830, for 5500	
	1 note same drawer, date, endorser, and due 20th Feb'y, 1830, for 5500	
	1 note same drawer, date, endorser, and due 10th March, 1830, for 5500	
	$25,000	
	Amounting in all to $25,000—which notes, when discounted, the proceeds to go to the credit of this account.	
	REYNOLDS, BYRNE & Co.	

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PAPER MARKED G—Continued.

in account with Reynolds, Byrne & Co. Cr.

Dates.	Interest at 10 pr. ct. pr. year to 1st May, 1829.	Amount.	Due.	Days.	Int'rs't
1827					
March 19	By nett proceeds of sales of 63 bales cotton, as per account rendered - - -	2306 03	March 12	50	32 02
30	Do. 11 do. as per do. -	416 38	March 27	35	4 08
April 10	Do. 23 do. as per do. -	951 38	April 8	23	6 06
	Interest on $645 63 not due till 3d of May, 1829 - -	-	May 3	2	36
	Do. on $645 15 not due till 24th of May, 1829 - -	-	May 24	23	4 14
	Do. on $200 not due till 14th of May, 1829 - - -	-	May 14	13	72
	Balance of interest - -	-	-	-	159 84
	Balance of account - -	22573 23			
		$26247 02			$207 22

They also read in evidence to the jury the following depositions, to wit:

Depositions of Hugh Bell, Anthony Sloane, L. F. Hermann, Samuel Jaudon, and G. R. Stringer, of the city of New Orleans.

Interrogatories to all the witnesses.

1st interrogatory. Do you know all or any of the parties in the above suit, and state whom you know?

2d interrogatory. Is, or is not, the paper marked A, purporting to be a letter from Reynolds, Byrne & Co. to Daniel Greenleaf, dated 29th June, 1829, in the handwriting of Reynolds, Byrne & Co., and signed by them, or one of them?

3d interrogatory. Is, or is not, the paper B, purporting to be an account current of Chester Haring with Reynolds, Byrne & Co. up to 1st June, 1829, written in the handwriting of the book-keeper, or one of the authorized clerks of said Reynolds, Byrne & Co., at that time? And, if so, state the name of said clerk or book keeper.

4th interrogatory. Is, or is it not, the usual practice with Reynolds, Byrne & Co. to send off accounts current, made out by their book-keeper, without signing the same?

Interrogatories to be put to Hugh Bell, Anthony Sloane, and L. F. Her mann.

5th interrogatory. Do you, or do you not. know that Reynolds, Byrne & Co. received from Chester Haring and Daniel Greenleaf, on the 1st May, 1829, five notes drawn by said Haring, endorsed by said Greenleaf, dated 1st May, 1829, and for the following amounts, and payable to the annexed stated periods, viz.

One for $4,000, payable 20th November, 1829;
One for $4,500, payable 20th December, 1829;
One for $5,500, payable 20th January, 1830;
One for $5,500, payable 20th February, 1830; and
One for $5,500, payable 10th March, 1830; or have you not understood the same from Reynolds, Byrne & Co.?

6th interrogatory. Do you, or do you not, know that the words *disct.* on the credit side of the said account current paper B, stand for *discounted?* And are not the nett proceeds of the five notes, after being discounted, and entered to the credit of said account current paper B, the nett proceeds of the same five notes described as aforesaid in interrogatory 5th? And have you not understood from Reynolds, Byrne & Co. that said notes were so discounted, and the proceeds thereof entered to the credit of said account?

7th interrogatory. Do you, or do you not, know that said account current paper B, is a correct transcript from the books of accounts of Reynolds, Byrne & Co.?

8th interrogatory Have you, or have you not, seen a bond in the possession of Reynolds, Byrne & Co., which was drawn by the defendants to the above suit, and made payable to Chester Haring in the sum of $32,000? and did not said bond contain an assignment and endorsment upon the back of it from Chester Haring to Reynolds, Byrne & Co.?

9th interrogatory. Was, or was not, the assignment upon said bond, dated 1st May, 1829? And state at what time, as nearly as you can, you first saw said bond in the possession of Reynolds, Byrne & Co.

10th interrogatory. Have you, or have you not, heard said Reynolds, Byrne & Co., or some one of the firm, say, and acknowledge, that they had received such a bond from the hands of the said Chester Haring; and that they held it as *bona fide* assignees? And state at what time you understood from them that they received it from said Haring.

Interrogatories to Samuel Jaudon and G. R. Stringer, also to Hugh Bell, Anthony Sloane, and L. F. Hermann.

11th interrogatory. Do you, or do you not, know that Reynolds, Byrne & Co. held in their possession, as their own property, the five notes as aforesaid, described in interrogatory 5th?

12th interrogatory. Do you, or do you not, know that Reynolds, Byrne & Co., procured all or any part of the aforesaid notes to be discounted? and, if so, did they endorse them, and draw the money on them? and, if so, who thereby became the *bona fide* holders of said notes? And what have you, at any time, understood from them as to these particulars?

13th interrogatory. Do you, or do you not, know that the drawers, or first endorsers of said five notes, or any of them, paid them at maturity? and,

if not paid by them, were they paid to the *bona fide* holders by any second, third, or subsequent endorser? and, if so, by whom were they so paid and taken up?

And state all you may have understood from Reynolds, Byrne & Co. as to these particulars?

14*th interrogatory.* Do you know any thing more that may be material for defendants? If you do, state the same as fully as if herein particularly required thereto.

Cross interrogatories to all the witnesses.

1*st cross interrogatory.* Do you, or do you not, know that said notes were discounted with the concurrence and authority of Daniel Greenleaf, he being the assignee and exclusive representative of the late firm of Chester Haring? And whether said five notes were, or were not, taken up by, and returned to said Reynolds, Byrne & Co.? And whether or not said Daniel Greenleaf or Chester Haring ever did pay said notes, or any part or portion thereof?

2*d cross interrogatory.* Do you, or do you not, know the amount due by the late firm of Chester Haring to Reynolds, Byrne & Co., in account current, on the first day of May, A. D. 1829? If so, state the same fully. And what was the amount due in account current by the late firm of Chester Haring to Reynolds, Byrne & Co., on or about the first day of April, A. D 1830?

3*d cross interrogatory.* Did, or did not, the various debits in said account current, charged subsequent to the first of May, 1829, originate in dealings and transactions between said firms previous to the first of May, 1829, with the exception of the interest, but the results of which could not be known, and were not ascertained until after the first of May, 1829?

4*th cross interrogatory.* Do you, or not, know any thing further material for the plaintiffs? If so, state it fully, and at large, under this general interrogatory.

Hugh Bell, the first witness, answers to the

First interrogatory. I know plaintiffs; don't know any of the defendants.

To 2d interrogatory. The paper marked A, addressed to Daniel Greenleaf, and of date 29th June, 1829, is signed by John B. Byrne, a partner of the house of Reynolds, Byrne & Co.

To 3d interrogatory. The said account current, or paper B, is in the the handwriting of Isaac M. Weston, who was then, and is now the bookkeeper of Reynolds, Byrne & Co.

To 4th interrogatory. Reynolds, Byrne & Co. have frequently sent forward account current made out from their books without signing the same.

To 5th interrogatory. The said notes were received by Reynolds, Byrne & Co.

To 6th interrogatory. The word disct. in paper B, is intended for *discounted.* And the proceeds of 5 notes were placed to credit of Chester Haring as per said paper B.

To 7th interrogatory. Said paper B, or account current, agrees with the books of Reynolds, Byrne & Co.

To 8th interrogatory. I have seen said bond signed by the defendants; and said bond had an assignment or endorsement on it from Chester Haring to Reynolds, Byrne & Co.

To 9th interrogatory. I do not recollect the state of the transfer on said bond, but think I must have seen it during the month of May, 1829.

To 10th interrogatory. I have heard the said Reynolds, Byrne & Co state that they had received said bond, and held it as a good security; the time received, as before stated, I do not precisely recollect.

To 11th interrogatory. The said 5 notes, as described in interrogatory 5, are held by Reynolds, Byrne & Co , as the property of Chester Haring, and, when discounted proceeds were to be placed to his credit, in Reynolds, Byrne & Co.'s books, to relieve, in part, the said Reynolds, Byrne & Co., of their heavy cash advances to the said Chester Haring.

To 12th interrogatory. I know that such notes were held by them for the purpose of being discounted, and were discounted, to effect which, they, the said Reynolds, Byrne & Co., had to endorse them. Who they were discounted by, I at present cannot recollect, but presume that can be known by reference to the notes themselves.

To 13th interrogatory. I know positively that said notes were paid by Reynolds, Byrne & Co., to the *bona fide* holders.

To 14th interrogatory. Nothing.

And the said Hugh Bell further answers to the

1st cross interrogatory. The said notes were discounted, or caused to be discounted, by Reynolds, Byrne & Co., from the written authority signed by Daniel Greenleaf, under date 1st May, 1829, addressed to said Reynolds, Byrne & Co., setting forth that the proceeds only, after said notes were discounted, should go to the credit of said Haring. Said notes, nor any part, have never, to my knowledge, been paid by said Chester Haring, or the said D. Greenleaf.

2d cross interrogatory. The late Chester Haring was indebted to plaintiffs,(R. B., & Co.,) on the 1st day of May, 1829, in the sum of $22,573 23. On the date of 1st April, 1830, deponent did not live in their employ, but their books show a sum indebted to them of $27,747 99, exclusive of interest since 13th March, 1830.

To 3d cross interrogatory. I know that there were various outstanding dealings at the date of 1st May, 1829, but, as I left the house on 15th July, 1829, before the results were known, I cannot answer positively.

To 4th cross interrogatory. Nothing.

And hereunto signs his name.

HUGH BELL.

Anthony Sloane, the second witness, answers to the

1st interrogatory. I know the plaintiffs; the defendants I do not know.

To 2d interrogatory. The letter alluded to in this interrogatory was written by J. B. Byrne, a partner of the mercantile firm of Reynolds, Byrne & Co.

To 3d interrogatory. The account current, or paper marked B, was made out from plaintiffs' books, and written by Isaac M. Weston, their book-keeper.

To 4th interrogatory. Plaintiffs have frequently forwarded accounts current without signing the same, but, to the best of my recollection, have always confirmed the balances of such documents in letters accompanying.

To 5th interrogatory. The five notes described in this interrogatory were received about the period of my leaving the employment of plaintiffs. I, therefore, do not recollect any thing of the matter.

To 6th interrogatory. The words disc't, or paper B, was intended for discounted; and the proceeds appear by plaintiffs' books to be placed to the credit of said Chester Haring as per said paper B, or account current.

To 7th interrogatory. Said paper B, or account current, appears to have been made out after I had left the employment of plaintiffs.

To 8th, 9th, 10th, 11th, 12th, and 13th interrogatories. My answers to these interrogatories, are, that the matters occurred about, and after the period of my leaving the employment of plaintiffs. I therefore do not recollect any thing positive relative thereto.

To 14th interrogatory. I do not recollect any thing further that may be material to said defendants.

And the said Anthony Sloane further answers to the

1st, 2d, and 3d cross interrogatories. My answer to these interrogatories, are, that these matters occurred about, and after the period of my leaving the employment of plaintiffs: I therefore do not recollect any thing positive touching the same.

To 4th cross interrogatory. I do not recollect any thing material further for the plaintiffs.

And hereunto signs his name.

ANTH'Y SLOANE.

L. F. Hermann, the third witness, answers to the

1st interrogatory. I know the plaintiffs, and D. Greenleaf.

To 2d interrogatory. The letter alluded to in this interrogatory, was written by John B. Byrne, one of the firm of Reynolds, Byrne & Co.

To 3d interrogatory. The account current, or paper B, was made out from plaintiffs' books, and written by Isaac M. Weston, their authorized bookkeeper.

To 4th interrogatory. Plaintiffs have frequently forwarded accounts current without signing the same, but have generally confirmed such in their communications accompanying the same.

To 5th interrogatory. The five notes, as described in this interrogatory, were received by plaintiffs.

To 6th interrogatory. The word "disct'd," in paper B, was intended for discounted; and the proceeds of the five notes, as per 5th interrogatory, was placed to the credit of said Chester Haring, as per said paper B, or account current.

To 7th interrogatory. Said paper B, or account current, agrees with the books of plaintiffs.

To 8th interrogatory. I have seen the bond for $32,000 dollars alluded to. Said bond is signed by defendants, and in favor of said Chester Haring, and by him assigned to plaintiffs.

To 9th interrogatory. The transfer made by Chester Haring of his rights to said bond, was dated first May, 1829. I do not recollect precisely the time said bond was received by plaintiffs.

To 10th interrogatory. I have heard the plaintiffs state repeatedly that they had received said bond, and held it as *bona fide* assignees. And they further stated that, in case said Haring's account with them ever got up to, or above the sum of $32,000, the bond was to cover his debt to that full amount.

To 11th interrogatory. The said five notes, as described in interrogatory 5th, were held by plaintiffs as the property of said Haring, but to be discounted through the aid and endorsement of said plaintiffs, and the proceeds of the same to be placed to the credit of said Haring, in account, to relieve said plaintiffs of the heavy cash advance they were under to said Haring.

To 12th interrogatory. I know that said five notes were held by plain-

tiffs, as before stated, to raise money on, to effect which they, the said Reynolds, Byrne & Co., had to endorse them to get them discounted here by capitalists, whose names I do not recollect, but I suppose they are endorsed on the back of said notes.

To 13th interrogatory. I know positively that said notes were not paid by the drawer, nor the first endorser, but were paid by the said plaintiffs after said notes had been duly protested.

To 14th interrogatory. I do not now recollect any thing further that may be material to said defendants.

And the said L. F. Hermann further answers to the

1st cross interrogatory. The said five notes, as in interrogatory 5th, were caused to be discounted by Reynolds, Byrne & Co., from the written authority signed by Daniel Greenleaf, under date of the 1st May, 1829, addressed to said Reynolds, Byrne & Co., setting forth that the proceeds only, after said notes would be discounted, should go to the credit in account of said Chester Haring. Said notes, nor any part thereof, have ever been paid by said Chester Haring, or said Daniel Greenleaf; nor has there ever been any money or moneys paid by either of the said Haring or Greenleaf to said plaintiffs since said notes were discounted, and proceeds placed to credit of said Haring, except, however, the proceeds of two bales of cotton, being seventy-three dollars and six cents.

To 2d cross interrogatory. The firm of "Chester Haring" was, by account, in debt to the said plaintiffs on the first of May, 1829, in the sum $22,573 23 c.; and on the 1st of April, 1830, the said firm was in debt to said plaintiffs in the sum of $37,747 99 c., exclusive of interest since the 13th day of March, 1830.

To 3d cross interrogatory. The various debits in said account current, charged subsequent to the first of May, 1829, originated in dealings and transactions between said firms previous to the first May, 1829, with the exception of interest, &c., but the result of which could not be known, and were not ascertained until after the first of May, 1829, as they consisted principally of adventures to foreign ports.

To 4th cross interrogatory. I do not now recollect any thing further material for the plaintiffs.

And hereunto signs his name.

L. F. HERMANN.

Samuel Jaudon, the fourth witness, answers to the

1st interrogatory. That he is acquainted with Mr. James M. Reynolds, Mr. John B. Byrne, and Mr. Wm. Ferriday, but none of the others.

To 2d interrogatory. That it is as he believes.

To 3d, 4th, and 11th interrogatory. That he did not know.

To 12th interrogatory. That a note of C. Haring in favor of D. Greenleaf, and endorsed by Reynolds, Byrne & Co., for five thousand five hundred dollars, was discounted by the office of B. U. States at New Orleans, for Samuel Hermann & Son, protested for non-payment, and paid afterwards to the bank (the bona fide holder) by Reynolds, Byrne & Co., as endorsers. And a similar note for five thousand five hundred dollars was discounted for Yeatman, Woods & Co., protested for non-payment, and paid by Reynolds, Byrne & Co., as endorsers. Of the other notes he knows nothing.

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And the said Samuel Joudon answers to the

1st, 2d, and 3d cross interrogatories. That he knows nothing about the matters contained in these interrogatories except as above stated.

And hereunto signs his name.

S. JAUDON.

G. R. Stringer, fifth witness, answers to the

1st interrogatory. That he is acquainted with James M. Reynolds and John B. Byrne, but none of the others.

To 2d interrogatory. That the paper marked A, purporting to be a letter from Reynolds, Byrne & Co., to Daniel Greenleaf, dated 29th June, 1829, is in the handwriting of the said Reynolds, Byrne & Co.

To 3d, 4th, 11th, 12th, 13th, and 14th interrogatories. That he knows nothing of the matters contained in these interrogatories.

And the said G. R. Stringer further answers to the

1st, 2d, and 3d cross interrogatories. That he knows nothing of the matters contained in these cross interrogatories.

And hereunto signs his name.

G. R. STRINGER.

Paper marked A, referred to, and annexed to the above depositions.

NEW ORLEANS, *29th June*, 1829.

D. GREENLEAF, Esq'r.

DEAR SIR: We enclose, herewith, account current of Chester Haring, showing a balance due us, as per statement at foot, of $25,109\frac{40}{100}$ dollars; and we enclose herewith, account sales of two bales "low", proceeds of $73 06 at his credit. We have no sales yet from England, but look daily for them. Cotton very dull, at 7 to 10 cents.

We are respectfully yours,

REYNOLDS, BYRNE & Co.

PAPER B, referred to, and annexed to the foregoing depositions.

Dr. *Chester Haring, Esqr.*

Dates.	Interest at 10 pr. ct. pr. year to 1st June, 1829.	Amount.	Due.	Days.	Int'r'st
1829					
May 1	To balance due this date as per account rendered - - -	22573 23	May 1		
13	Amount of your note favor of D'l Greenleaf, due on the 13th March, 1830 - $5500				
	Amount of your note favor of D'l Greenleaf, due 23d Feb'y, 1830 - 5500				
	Amount of your note favor of D'l Greenleaf, due 23d Jan'y, 1830 - 5500				
	Amount of your note favor of D. Greenleaf, due 23d Nov'r, 1829, - 4000				
	Amount of your note favor of D. Greenleaf, due 23d Dec'r, 1829 - 4500				
		25000			
	2½ p'r c. for endorsing the above	625			
	Balance of interest - - -	123 98			
		$48322 21		$	194 38
1829					
June 1	To balance due, viz. - -	$25109 57			
	On the 23 Nov'r, 1829 $4000				
	" 23d Dec'r " 4500				
	" 23d Jan'y, 1830 5500				
	" 23d Febr'y, " 5500				
	" 13th March " 5500				
	In cash June 1st 109 57				
	$25109 57				

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PAPER B—Continued.

in account with Reynolds, Byrne & Co. Cr.

Dates.	Interest at 10 pr. ct. pr. year to 1st June, 1829.		Amount.	Due.	Days.	Inter'st
1829						
May 13	By this sum rec'd for your note of $5500, dis't	$5060				
	Do. of $5500, dist'd	5032 50				
			10092 50	May 13	19	52 28
23	Do. of $5500, dist'd	- -	5066 12	May 23	9	12 66
30	Do. of $4000, dist'd	$3807 78				
	Do. of $4500, dist'd	4246 24				
			8054 02	May 30	2	4 46
	Balance of interest - - -		—	-	-	123 98
	Balance of account - - -		25109 57			
			$48322 21			194 38

The defendants also proved that, in the month of April, A. D. 1829, the said Chester Haring had sold out his mercantile establishment to said Daniel Greenleaf, and had quit the business to assist him in which the said letter of credit had been given. The defendants also read in evidence to the jury the following letter from Reynolds, Byrne & Co., to Daniel Greenleaf.

PAPER MARKED I.

New Orleans, *24th November*, 1829.

Daniel Greenleaf, Esq'r.,
Port Gibson, Missi.

Dear Sir: We have to advise you that the note of Chester Haring in your favor, for $4,000 doll's, and due yesterday, was presented at our office, and refused payment for want of funds of Chester Haring's or yours, and protested in consequence thereof.

As we are endorsers (after you,) we must, of course, take it up this day; and we, therefore, request you will immediately forward the needful, else we must proceed for the recovery of the same.

We are, very respectfully, yours,
REYNOLDS, BYRNE & Co.

We presume Mr. Reynolds is ere this in Natchez.

Further to prove that, by calling on said Greenleaf for the payment of the note for $4000, mentioned in their said receipt attached to their said account, they considered that, as also the other notes mentioned in said receipt, as their property, and as a satisfaction of said account as regarded the signers of said letter of credit; and that they looked to the maker, Chester Haring, and the endorser, Daniel Greenleaf, of said notes, for payment, and not to the signers of said letter of credit for any portion thereof.

The plaintiffs then produced, offered, and read, in evidence to the jury, the said five notes mentioned in said receipt, as also the endorsements thereon.

Doll's 4,000 PORT GIBSON, *May* 1, 1829.

On the 20th of November next, I promise to pay Dan'l Greenleaf, or order, four thousand dollars, value received, payable at the counting room of Messrs. Reynolds, Byrne & Co., New Orleans.

CHESTER HARING.

No. 205, (Due 20-23 Nov'r, 1829.)

(Endorsed) "Dan'l Greenleaf," Reynolds, Byrne & Co., by Hugh Bell, "Tayleur, Grimshaw & Sloane."

Doll's 4,500 PORT GIBSON, *May* 1*st*, 1829.

On the 20th of December next, I promise to pay Daniel Greenleaf, or order, four thousand five hundred dollars, value received, payable at the counting room of Messrs. Reynolds, Byrne & Co., New Orleans.

CHESTER HARING.

No. 204. Due 20-23 Dec'r, 1829.

(Endorsed) "Daniel Greenleaf," Reynolds, Byrne & Co., by Hugh Bell, "Tayleur, Grimshaw & Sloane."

Doll's 5,500 PORT GIBSON, *May* 1, 1829.

On the twentieth of January next, I promise to pay Daniel Greenleaf, or order, five thousand five hundred dollars, value received; payable at the counting room of Messrs. Reynolds, Byrne & Co., New Orleans.

CHESTER HARING.

(Endorsed) "Daniel Greenleaf," Reynolds, Byrne & Co., by Hugh Bell, "Sam'l Hermann & Son."

Doll's 5,500 PORT GIBSON, *May* 1, 1829.

On the twentieth of February next, I promise to pay Dan'l Greenleaf, or order, five thousand five hundred dollars, value received, payable at the counting room of Messrs. Reynolds, Byrne & Co., New Orleans.

CHESTER HARING.

(Endorsed) "Daniel Greenleaf," Reynolds, Byrne & Co., by Hugh Bell, "Yeatman, Woods & Co."

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Doll's 5,500 PORT GIBSON, *May* 1, 1829.

On the tenth day of March next, I promise to pay Daniel Greenleaf, or order, five thousand five hundred dollars, value received; payable at the counting room of Messrs. Reynolds, Byrne & Co. New Orleans.

CHESTER HARING.

Endorsed, "Dan'l Greenleaf," "Yeatman, Woods & Co."

Whereupon the defendants, by their counsel, requested the court to instruct the jury—1st. That the said letter of credit sued on is not a continuing guarantee, but is a limited one; and that when an advance or advances, acceptance or acceptances, endorsement or endorsements, had been made by the plaintiffs, on the faith of said letter of credit, to the amount of $8,000, the guarantee became *functus officio*, and ceased to operate upon any future advances, acceptances, or endorsements, made by said plaintiffs for Chester Haring. And that, if the said plaintiffs received from said Haring, in payment of their advances, acceptances, or endorsements, made on account of said guarantee, the amount of $8,000, it was a discharge of said letter of guarantee; and that any future advances, acceptances, or endorsements, cannot be charged against, and recovered from the defendants, by virtue of the said letter of credit.

2d. That to entitle the plaintiffs to recover on said letter of guarantee, they must prove that notice had been given, in a reasonable time after said letter of guarantee had been accepted by them, to the defendants, that the same had been accepted.

3d. That, to entitle the plaintiffs to recover on said letter of credit, they must prove that, in a reasonable time after they had made advances, acceptances, or endorsement, for said Haring, on the faith of said letter of guarantee, they gave notice to said defendants of the amount and extent thereof.

4th. That to entitle the plaintiffs to recover on said letter of credit, they must prove that a demand of payment had been made of Chester Haring, the principal debtor of the debt sued for, and in case of non-payment by him, that notice of such demand and non-payment should have been given in a reasonable time to the defendants, and, in failure of such proof, the said defendants are in law discharged.

5th. That the promissory notes, drawn by C. Haring, the principal debtor, and endorsed by Daniel Greenleaf, and received by the plaintiffs on the 1st May, 1829, as expressed in the said receipt of that date at the end of their said account, and the discounting the same in New Orleans by the plaintiffs after they had endorsed the same for that purpose, the same being discounted before they fell due, and the receipt of the nett proceeds, arising from the discounting, carried to the credit of Chester Haring's account on the books of the plaintiffs, was a discharge of the guarantors on said guarantee, provided the said debt now sued for was included in the sum total of said account, on account of which said promissory notes were taken and receipted for.

6th. That if the said notes, mentioned in said receipt, were received as conditional payments of said debt, the defendants are discharged, unless it be proved that due diligence has been used to recover the amount called for by said notes from the individuals responsible thereon, and that the same could not be obtained.

7th. That the plaintiffs, by accepting said notes on account of said debt, from C. Haring, the principal debtor, with D. Greenleaf as endorser, on ac-

count of said debt, the same being at that time due, and receiving the money on the same by discounting them, and the passing said notes away by endorsement, could not have sued Haring for the original debt before said notes fell due, dishonored, and returned to the plaintiffs; and that, therefore, they, by their own act, placed it out of their power to proceed against said Haring, to recover said debt before said notes fell due, and were returned to the plaintiffs, which, in law, discharged the guarantors.

8th. That, on the whole evidence given to the jury, the plaintiffs are not entitled to recover; which instructions the court refused to give, but charged the jury that the law on each of said points was against the defendants, which opinion of the court refusing the instructions asked by defendants, and charging the law on said points to be in favor of the plaintiffs, the defendants, by their counsel, excepts, and prays that this, their bill of exceptions, may be signed, sealed, and made a part of the record in the above cause, which is accordingly done.

PETER RANDOLPH, *Dist. Judge.* [SEAL.]

REYNOLDS, BYRNE & Co. vs J. S. DOUGLASS et al. } *U. S. of America, District Court, Mississippi District, January term,* 1831.

Be it also remembered, that, after the trial of the above cause, and during the same term at which said cause was tried, and after the jury were discharged, the defendants, by their counsel, tendered to the court a bill of exceptions, formally drawn up, embracing all the exceptions taken at the trial by the defendants, and noted by the court during the trial before the jury, except one, in the following words, to wit, "that, on the whole evidence given to the jury, the plaintiffs are not entitled to recover," which was waived by the defendants at the time said bill of exceptions was presented, and not insisted on as an exception when said bill of exceptions was presented to the presiding judge for his signature, and requested the court to sign the same. Whereupon, the court refused to sign said bill of exceptions unless the defendants would insert in the same said exceptions, which the defendants waived as aforesaid, and connect, therewith, the substance of the whole evidence given in the cause, which the defendants, by their counsel, under said decision were compelled to do. To which decision of the court, the defendants, by their counsel, excepts, and prays that this, their bill of exceptions, may be signed, sealed, and made a part of the record in this cause; which is accordingly done.

PETER RANDOLPH, [SEAL.]

Afterwards, to wit, at the said January term of the court first aforesaid, to wit, on the ninth day of February, in the year of our Lord one thousand eight hundred and thirty-one, come the parties aforesaid, by their respective attorneys aforesaid; and,

It is, therefore, considered by the court that the said Reynolds, Byrne & Co., the plaintiffs, do recover against the said James S. Douglass, John G. Singleton, and Thomas Going, the sum of eight thousand dollars for their said damages, by the jurors aforesaid, in form aforesaid assessed. And also the sum of two hundred and eighty-five dollars and eighty-four cents for their costs and charges by the said court now here adjudged to the said Reynolds, Byrne & Co., and with their assent; which said damages, costs, and

charges, amount, in the whole, to eight thousand two hundred and eighty-five dollars and eighty-four cents; and the said defendants in mercy, and so forth.

Afterwards, and at the same term of the court aforesaid, the following order is entered of record, to wit: "It is ordered by the court that the extract of a letter, marked Z, from Thomas Going, one of the defendants in this suit, addressed to William Ferriday, esq., and filed in court, in which he declines suing out a writ of error in this cause, be, by consent of parties, made a part of the record herein, which said extract is as follows:

"PORT GIBSON, 30 *March*, 1830.

"WILLIAM FERRIDAY, Esq'r.

SIR: Mr. Whiting arrived in this place on Sunday morning last. It was not in my power to get an interview with him before last evening, at which time I informed him that I had come to the determination not to ask for an appeal in the case of Reynolds, Byrne & Co., vs. Douglass and others, but that Douglass might do as he pleased."

Yours respectfully,
THOMAS GOING.

And whreupon the said defendants, by their attorney aforesaid, pray an appeal from the judgment aforesaid, so as aforesaid rendered to the Supreme Court of the United States, and the same is granted unto them.

Writ of Error Bond.

UNITED STATES OF AMERICA,
District of Mississippi.

Know all men by these presents, that we, James S. Douglass, John G. Singleton, John Booth, John R. Dun, and Passmore Hoopes, of Claiborne county, and State of Mississippi, are held and firmly bound unto Reynolds, Byrne & Company, in the just and full sum of sixteen thousand dollars, lawful money of the United States, to be paid to the said Reynolds, Byrne & Company, their lawful attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and every of them, jointly and severally, firmly by these presents: sealed with our seals, and dated this twelfth day of April, in the year of our Lord one thousand eight hundred and thirty-one.

The condition of this obligation is such, that, whereas at a term of the district court of the United States for the Mississippi district, held at Natchez, on the fourth Monday in January, A. D. 1831, a judgment was rendered by said court in favor of said Reynolds, Byrne & Co., against the said James S. Douglass, John G. Singleton, and one Thomas Going, for the sum of eight thousand dollars and costs of suit.

And the said James S. Douglass, and John G. Singleton, have sued out a writ of error, from the Supreme Court of the United States to reverse said judgment, and the name of Thomas Going is used in said writ of error.

Now, if the said James S. Douglass and John G. Singleton shall prosecute their said writ of error to effect, and shall well and truly pay and satisfy said judgment, and all such damages, interest, and costs, as the said Su-

preme Court of the United States shall adjudge in the premises, if they fail to make their plea good, then, and in that case, the above obligation to be void, else to remain in full force and virtue.

JAMES S. DOUGLASS, [SEAL.]
JNO. G. SINGLETON, [SEAL.]
JOHN BOOTH, [SEAL.]
JOHN R. DUN, [SEAL.]
PASSMORE HOOPES, [SEAL.]

Test:
AMOS WHITING,
S. M. GRAYSON,
JAS. MCALLISTER.

"The securities to the within bond are approved. April 16, 1831."

UNITED STATES OF AMERICA, } *ss.*
District of Mississippi. }

I, William Burns, clerk of the district court of the United States in and for the Mississippi, do hereby certify that the foregoing seventy-two pages (36 half sheets) contain as full, true, and complete a transcript of the record and proceedings had in the cause between the parties therein named, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, this tenth day of October, A. D. 1831, and in the fifty-sixth year of the independence of the United States of America.

WM. BURNS, *Clk.*

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SUPREME COURT OF THE UNITED STATES.

No. ~~101~~ 46.

GEORGE MORRIS AND DAVID GWYNNE, PLAINTIFFS IN ERROR,

VERSUS

LESSEE OF JOSIAH HARMER'S HEIRS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF OHIO.

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Pleas begun and held at the court house, in the town of Columbus, on Monday, the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, and of the American independence the fifty-fourth, before the honorable John McLean and John W. Campbell, judges of the circuit court of the United States within and for the seventh circuit and district of Ohio.

JAMES JACKSON, ex dem. the heirs of Josiah Harmer, deceased,
vs.
GEORGE MORRIS and DAVID GWYNNE. } *Ejectment.*

Be it remembered, that heretofore, to wit, at a circuit court of the United States within and for the seventh circuit and district of Ohio, begun and held on Monday, the twenty second day of December, in the year of our Lord one thousand eight hundred and twenty eight, and of the independence of the United States of America the fifty-third, came James Jackson, a citizen of the State and district of Pennsylvania, by Caswell and Starr, his attorneys, and filed in court here a declaration of ejectment against John Stiles, a citizen of the State and district of Ohio, as follows, to wit:

Declaration.

DISTRICT OF OHIO, ss.—*Circuit court of the United States of America for the district of Ohio, of the term of December, eighteen hundred and twenty-eight.*

James Jackson, a citizen of the State and district of Pennsylvania, by Caswell and Starr, his attorneys, complains of John Stiles, a citizen of the

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State and district of Ohio, of a plea of trespass and ejectment: For, that whereas Eliza Harmer and William Harmer, children and heirs at law of Josiah Harmer, deceased, which said Eliza Harmer is now intermarried with Evan Thomas, jun., who is still alive, and her husband, all of whom are citizens and residents of the State and district of Pennsylvania, heretofore; to wit, on the first day of January, in the year eighteen hundred and twenty-five, at the city of Cincinnati, county of Hamilton, and district of Ohio, had demised to the said John Stiles, and to farm let, four lots of ground, situate in the city (formerly town) of Cincinnati, in the county of Hamilton, and within the district of Ohio aforesaid, on the north side of Front street, and between Ludlow and Lawrence streets, two of which lots front on said Front street twelve rods in width, the other two being immediately in the rear, and altogether forming a parallelogram of twelve rods or one hundred and ninety eight feet on said Front street, and running back twenty rods or three hundred and thirty feet, and crossing Columbia street as now laid out, each lot containing sixty square perches, together with all the appurtenances and privileges thereunto belonging: to have and to hold the same to the said James Jackson, and his assigns, from the thirty-first day of December, in the year eighteen hundred and twenty-four, for and during the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. By virtue of which demise, the said James Jackson entered into the said several tenements above mentioned, with the appurtenances, and became, and was thereof, possessed for the term aforesaid so thereof granted to him; and the said James Jackson being so thereof possessed, the said John Stiles, afterwards, to wit, on the second day of Jan'y, in the year eighteen hundred and twenty-five, with force and arms, at the district aforesaid, entered into the said tenements, with the appurtenances above mentioned, in which the said James Jackson was so interested in manner and for the term aforesaid, which is not yet expired, and ejected, expelled, and removed the said James Jackson from the lots of land above mentioned, with the appurtenances; and other wrongs to the said James Jackson then and there did, against the peace and dignity of the United States of America, and to the damage of the said James Jackson of two thousand dollars, and therefore he brings suit.

CASWELL & STARR,
Attorneys for plaintiff.

Notice.

Messrs. William Crail, Joseph Foor, William Doty, John Galbaugh, William Mushon, Levias Hazen, Duncan McCollum, and James Goodloe.

GENTLEMEN: I am informed that you are in possession of a claim title to the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear at the next circuit court of the United States of America for the district of Ohio, on the fifth judicial day of said term, which will be on the twenty-seventh day of this present month of December, by some attorney of that court, and then and there, by rule of the same court, do cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me by default, and you will be turned out of possession. Dated this 15th day of December, A. D. 1828.

Yours, sincerely, JOHN STILES.

Service of declaration.

JAMES JACKSON, ex dem. Evan Thomas, jun., and Eliza Harmer, his wife, Josiah Harmer, and William Harmer, heirs, &c.

vs.

JOHN STILES.

Harvey Hall maketh oath, and saith: that he did, on the fifteenth day of December, 1828, personally serve Joseph Foor, William Mushon, Duncan McCollum, tenants in possession of part of the premises in the declaration of ejectment hereto annexed, with each a copy of said declaration, and the notice there underwritten, and at the same time acquainted the said Joseph Foor, William Mushon, and Duncan McCollum, of the intent and meaning of the said declaration and notice. And this deponent further saith, that, on the same day, he did serve William Crail, William Doty, John Golbaugh, tenants in possession of another part of the premises in the said declaration of ejectment mentioned, by leaving a copy thereof, and notice there underwritten, with each of their respective wives, at their dwellings, on said premises, in the absence of their husbands, and at the same time acquainted them, and each of them, with the meaning and intent of said declaration and notice. And further this deponent saith, that, on the same day, he did serve this said declaration on Levias Hogen and James Goodloe, tenants in other parts of the premises in said declaration mentioned, by leaving a copy thereof, and notice there underwritten, at each of their shops, on said premises, in their absence with a workman in each of said shops, and at the same time acquainted them with the meaning and intent of said declaration and notice, excepting all of said notices were directed to each of them, the said Joseph Foor, William Mushon, Duncan McCollum, William Crail, William Doty, John Galbaugh, Lavias Hogan, and James Goodloe, separately, i. e. the name of the persons to whom directed only in each notice.

HARVEY HALL.

Sworn and subscribed before me, this 16th day of December, 1828.

J. FOSTER, *Justice of the Peace.*

Consent rule plea.

And, by consent, George Morris and David Gwynne are made defendants in the room of the now defendant, John Stiles, the casual ejector. And the said defendants confessed the lease, entry, and ouster in the plaintiff's declaration supposed, agree to and insist upon the title only at the trial, and for plea say, they are not guilty of the trespass and ejectment, as the plaintiff, in his declaration hath alleged against them, and of this they put themselves upon their country for trial, and the plaintiff doth the like; therefore let a jury come, &c. And thereupon it is ordered, that Joseph Gest, the surveyor of the city of Cincinnati, do go upon the lands in controversy between these parties, on such day as either party may appoint, the adverse party having legal notice, and then and there lay off the same as either party may direct, having regard to deeds and such other evidence of title as shall be produced, report all matter of facts specially, and return four fair plats and certificates to the clerk's office of this court, at least thirty days before our next term; and the marshal of this district is hereby directed to attend, if required,

Order of survey.

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and remove all force, should any be offered: and, thereupon, this cause was continued until the July term of said court, in the year *Continuance.* of our Lord one thousand eight hundred and twenty-nine. At which said July term, came the said parties, by their attorneys: upon a professional statement made by Mr. Ewing, attorney for the defendants, this cause is continued upon the defendants paying the costs of this term. And now, at this day, to wit, the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, the time and place first herein aforesaid mentioned, the parties, by their attorneys, appear; and, thereupon, for trying the issue, came a jury, to wit: Robert Mitchel, Benjamin Johns, James Sharp, John Al- *Jury.* bin, Lewis Della, Edward Darr, John McClareham, William Vance, Martin Armstrong, Augustin King, Thos. Boyd. and Nathaniel Harris, who being empannelled, elected, tried, sworn, and affirmed to try the issue between the parties, and upon their oath do say, that they *Verdict.* find the defendants guilty of the trespass in plaintiff's declaration mentioned, and do assess his damages at one cent. It is therefore considered by the court, that the plaintiff recover of the defendants his term yet to come and unexpired in the premises aforesaid, to- *Judgment.* gether with one cent, the damages by the jurors in form aforesaid assessed, and also his costs by him about his suit in this behalf expended. And, it is ordered, that a writ of possession issue accordingly upon the application of the plaintiff. During the progress of this cause the defendants, by their counsel, tendered a bill of exception to the opinion of the court upon the points in said bill of exceptions mentioned, and prayed that the same might be signed, sealed, and enrolled, and made a part of the record in this cause, which is accordingly done; which bill of exceptions is as follows, to wit:

Bill of exceptions.

December term, A. D. 1829.

THE LESSEE of Harmer's heirs,
vs.
GWYNNE & MORRIS. } *Ejectment.*

Be it remembered, that on the trial of this cause, the jury being empannelled and sworn therein, the plaintiffs gave in evidence the deed from John C. Symmes to Josiah Harmer, marked No. 1, which is as follows:

Deed from Symmes to Gen'l Harmer.

To all people who may see these presents: Know ye, that I, John Cleves Symmes, of the county of Hamilton, and territory of the United States northwest of the river Ohio, proprietor of the country lying between the Great and Little Miami rivers, for the consideration of the sum of thirty-two pounds currency, at seven shillings and six pence the dollar, to me in hand well and truly paid, at and before the ensealing and delivery hereof, by Josiah Harmer, Esquire, brigadier general in the army of the United States, and commandant at fort Washington, have granted, bargained, and sold, aliened, enfeoffed, and confirmed, and, by these presents, do grant, bargain, and sell, alien, enfeoff, and confirm unto the said Josiah Harmer, and to his heirs and assigns forever, eight lots of land in the town of Cincinnati, in the county of Hamilton, in the Miami purchase, each lot con-

taining sixty square rods of ground; the first four of the said eight lots are butted and bounded as followeth, viz. On the south side on the Front or river street, in said town, lying directly in front of fort Washington, being twelve rods wide on the said street, including two lots; and extending northerly from the said Front street twenty rods, to the south side of the second street from the Ohio, and adjoin the said second street twelve rods, from east to west; and, on the east, bounded by lands of his excellency Governor St. Clair: the other four lots, being part of the eight lots aforesaid, are butted and bounded as followeth, southerly by the north side of the said second street, twelve rods wide on the said street, including two lots; on the east by the first street running northerly from the Ohio, on the east side of Fort Washington, adjoining said street twenty rods, from north to south; on the north by the south side of the third street from the Ohio river, adjoining the said third street twelve rods, from east to west; the said four lots inclusively being an oblong square of twelve rods wide, and twenty rods long from street to street, and lying eastwardly from fort Washington; together with all and singular the privileges and appurtenances to the aforesaid eight lots belonging, or in any manner or way appertaining: to have and to hold the said eight lots of land unto the said Josiah Harmer, to the only proper use, benefit, and behoof of the said Josiah Harmer, and to his heirs and assigns forever. And the said John Cleves Symmes, for myself and my heirs, do hereby covenant with the said Josiah Harmer, and with his heirs and assigns, that from the day of the date hereof, and at all times forever hereafter, I, the said John Cleves Symmes, will indemnify and save harmless the said Josiah Harmer, his heirs and assigns, in the quiet possession and enjoyment of the above granted eight lots, against the lawful claims and demands of me, the said John Cleves Symmes, my heirs and assigns, and against the lawful claims and demands of all and every person or persons whatsoever claiming the same, and all and every part of the said eight lots, with all and singular the privileges and appurtenances thereunto belonging, unto the said Josiah Harmer, and to his heirs and assigns, will warrant, and, by these presents, for ever defend.

In witness whereof, I, the said John Cleves Symmes, have hereunto set my hand, and affixed my seal, this sixth day of May, in the year of our Lord one thousand seven hundred and ninety-one.

JOHN C. SYMMES. [SEAL.]

Sealed and delivered in the presence of
D. STRONG, BARTHOLOMEW SHAMBURGH.

THE STATE OF OHIO, *Hamilton county, ss.*

Personally appeared before the subscriber, one of the associate judges in and for the county of Hamilton, the within named John Cleves Symmes, grantor of the within deed, who acknowledged the same to be his own voluntary act, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and seal, at Cincinnati, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and four.

MATHEW NIMMO. [SEAL.]

Received 29th, and recorded the 30th November, 1804, book F, No. 1, page 80.

JOHN W. BROWN,
Recorder of Hamilton county.

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Plat and certificate of the surveyor of Hamilton county.

A, B, C, D, four lots of ground claimed by plaintiffs as the first described in deed from John C. Symmes to Josiah Harmer, in front of fort Washington.

E, F, G, H, four lots in same deed in possession of plaintiffs.

I, K, L, D, N, M, the ground as released by E. Stone, under decree contended for by defendants in the present action.

N, B, C, L, ground in controversy.

B, C, line claimed by plaintiffs.

N, L, line to which defendants have in possession.

O, 1, site of General Harmer's summer house, pr. Wm. H. Orcut.

O, 2, do. do. do. Griffin Yeatman.

P, P, P, P, block houses at angles of fort Washington, by William H. Orcut.

Q, Q, Q, Q, do. do. do. Doct. Dan'l Drake.

R, an old pit or sink by logs, lately discovered by digging a cellar.

S, brick house built by heirs of General Harmer.

T, T, T, T, lot laid out by Ethan Stone.

V, Wainwright's smith shop.

Z, site of an old cellar, pointed out by Griffin Yeatman as the one dug by Gov. St Clair.

U, house and warehouse of Charles Faran.

A, D, westwardly line of lots No. 1 and 24, of a plan of John C. Symmes, being the westerly line of his sub-division.

JAMES JACKSON, ex dem. Josiah Harmer's heirs, plaintiffs,
vs.
GEORGE MORRIS & DAVID GWYNNE, defendants. } *Ejectment.*

Pursuant to an order of the circuit court of the United States, seventh circuit, Ohio district, of December term, 1828, Monday, 29th, the undersigned, surveyor of the city of Cincinnati, did, on the 9th day of April, 1829, a day fixed by plaintiffs, (David Gwynne, one of the defendants, being sick and unable to attend,) and, on the 14th of April, inst., a day fixed by defendants, the plaintiffs attending, and proceeded to the premises in controversy, and surveyed the claims of the different parties, and examined such sites or objects as supposed to have a bearing to prove their respective claims, as pointed out or requested by the parties; I find the ground in controversy, as claimed by the plaintiffs, to be 60 feet 3 inches on Front street, running back northerly parallel to Lawrence street, 20 poles or 330 feet to the second street from the river, called Congress street: said claim lays immediately westward of, and adjoining lot No. 3 and 22, of John Cleves Symmes' map, as may be fully seen by the annexed plat, shewing the connexion and interference of the U. S. subdivision of the garrison reservation with that laid by John Cleves Symmes. I have made out four copies of the above map. Cincinnati, April 27th, 1829.

JOSEPH GEST, *Surveyor of Cincinnati.*

This map (see original) is the one referred to in the depositions, and one considered as in evidence. May 1st, 1829.

CASWELL & STARR,
Attorneys for plaintiffs.

They also gave in evidence the plat made by order of the court, marked No. 2; and having proved that the lessors of the plaintiff were the legal heirs and representatives of Josiah Harmer, deceased, the grantee in the deed from Symmes; and it being admitted that the defendants were in possession of the premises in question at the time of the service of the declaration in ejectment in this cause, they then offered in evidence the deposition of Nicholas Jones, David Zeigler, and R. Allison, having first proved the death of all the persons whose depositions were read, and also read the deposition of John Matson.

Deposition of John Cleves Symmes.

STATE OF OHIO, *Hamilton county, ss.*

Be it remembered, that on this seventeenth day of February, in the year 1809. (pursuant to due notice given him,) personally appeared before us the subscribers, two associate judges of the court of common pleas in and for the county aforesaid, James Silvers and John Matson, the underwritten deponent, John Cleves Symmes, who being examined on oath in the premises, in order to perpetuate the testimony between Josiah Harmer, Esquire, of the State of Pennsylvania, and Ethan Stone, Esquire, of Cincinnati, in the State of Ohio, of and concerning the purchase of eight small lots, commonly called in-lots, lying in the eastern part of the town of Cincinnati, and between the creek or branch of water called Deer creek, and the body of the town of Cincinnati, or rather the ground heretofore used for a parade in front of the late fort Washington.

This deponent, the said John Cleves Symmes, deposeth and saith, that in the fall of the year 1789, Major John Doughty arrived at Cincinnati with a detachment of the army of the United States, and laid the foundation of fort Washington, in Cincinnati. That very early in the beginning of the year 1790, at the special request of many of the officers of the garrison at that time stationed in fort Washington, this deponent was induced to lay out into small lots, of sixty square rods each, a portion of land lying between said fort Washington and the aforesaid parade on the *on the* west, and the before mentioned Deer creek on the east. This deponent further saith, that soon after the laying out of the aforesaid small lots, he sold eight of the said lots to Gen. Josiah Harmer, at time commandant of the garrison in said fort Washington, at the price of thirty two pounds, Pennsylvania currency, which sum of thirty-two pounds this deponent declares was fully paid and satisfied unto him by the said purchaser, General Josiah Harmer, the greater part thereof in cash, and fifteen dollars thereof by the acceptance of an order in favor of Abner Hunt, drawn by this deponent in April, 1790, on said General Harmer, and by said Josiah Harmer paid to said Abner Hunt, in full of said order for said fifteen dollars, which closed the account of this deponent against the said Josiah Harmer for the purchase money of said eight lots; which eight lots are particularly described and set forth in a deed of conveyance of the said eight lots, made, sealed, and delivered by the said John Cleves Symmes to the said General Josiah Harmer; by which deed of transfer the title to the said eight lots, as this deponent believes and fully intended, in the month of May, in the year 1791, (the date of said deed,) became vested in the said Josiah Harmer. This deponent further saith, that from the time of the sale of said eight lots to the said Josiah Harmer, he, this deponent, hath never entertained any idea that the said eight lots, as de-

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scribed in said deed, was, in any degree, his property, or that he had any control over them; the said General Harmer forthwith taking them into his immediate possession and occupancy.

Quest. by Mr. Stone. Was the deed dated and executed on the day it purports to have been, to wit, on the day and year therein specified?

Ans. I verily believe it was.

Quest. by Mr. Stone. Was the deed at that time delivered to General Harmer?

Answer. I verily believe it was. And further this deponent saith not.

JOHN CLEVES SYMMES.

Sworn and subscribed the day and year first written, before us.

JAMES SILVER,
JOHN MATSON.

Deposition of Nicholas Jones.

STATE OF OHIO, *Hamilton county, ss.*

The deposition of Nicholas Jones, taken on the seventeenth day of February, 1809, at the dwelling-house of James Conn, in the town of Cincinnati, before James Silver and John Matson, two of the judges of the court of common pleas in and for the county of Hamilton aforesaid, agreeable to notice served on Ethan Stone, Esquire, of Cincinnati, for the purpose of perpetuating the testimony of the said Nicholas Jones concerning the title and claim of General Josiah Harmer to a certain parcel of ground near the post office, in the eastern part of the town of Cincinnati. This deponent saith, he came to Cincinnati with General Josiah Harmer the winter fort Washington was built. In the same winter, Mr. Israel Ludlow surveyed, for said Josiah Harmer, four lots in the bottom west of Mr. Ruffin's, and four lots on the hill lying east of the garrison, fort Washington. Two of the lots on the hill, this deponent saith he cleared and fenced for the said Josiah, and assisted his gardner to cultivate them in a garden; and the said Josiah employed Capt. Tharp to build a summer-house on those two lots enclosed on the hill. And this deponent further saith, he cleared and fenced the four lots in the bottom, and reared two crops of corn for the said Josiah on those four lots; they were bounded on the north by the street leading from David E. Wade's and Joseph Prince, towards where Mr. Hunt's stone-house now stands, and near to the cellar dug by Gen'l St. Clair on the other side; and that those lots in the bottom remained in General Harmer's enclosure until General Wilkinson had the fences thrown down to extend the ground for exercising the troops. This deponent further states, that the last crop of corn was delivered to Abijah Hunt, who called himself, and acted as General Harmer's agent, though by what authority from the General this deponent knows not. And, further, this deponent understands that Mr. Israel Ludlow surveyed those before mentioned lots for the said Josiah at the request of John C. Symmes, Esquire. And further this deponent saith not.

his
NICHOLAS + JONES.
mark

Sworn and subscribed the day and year first above written, before us,

JAMES SILVER,
JOHN MATSON

Deposition of David E. Wade.

THE STATE OF OHIO, *Hamilton county, ss.*

The deposition of David E. Wade, taken on the 17th day of February, A. D. 1809, at the dwelling-house of James Conn, in the town of Cincinnati, before James Silver and John Matson, two of the judges of the court of common pleas for the county of Hamilton aforesaid, agreeable to notice served on Ethan Stone, Esquire, of Cincinnati, for the purpose of perpetuating the testimony of David E. Wade concerning the title and claim of General Josiah Harmer to a certain parcel of ground near the post office, in the town of Cincinnati. This deponent saith, that, in the year 1791, General Josiah Harmer had several lots lying southeast of fort Washington enclosed and planted with corn, in the bottom, between the fort and the river Ohio, and also several lots on the hill east of fort Washington, which the said Josiah occupied for a garden, and built a summer-house on them; and that the said Josiah informed this deponent that he owned those lots that he was in possession of. And this deponent was informed by John Cleves Symmes, Esquire, before the said Josiah had enclosed the said lots, that he had sold several lots to the said Josiah, and pointed to the same lots afterwards occupied by the said Josiah. This deponent thinks the lots in the bottom was occupied about two years; the lots on the hill was occupied for several years by the commandants of the garrison after General Harmer left the country. And further this deponent saith not.

DAVID E. WADE.

Sworn and subscribed before us, the day and year first written.

JAMES SILVER,
JOHN MATSON.

Deposition of David Zeigler.

STATE OF OHIO, *Hamilton county, ss.*

The deposition of David Zeigler, taken on the seventeenth day of February, A. D. 1809, at the dwelling-house of James Conn, in the town of Cincinnati, before James Silver and John Matson, two of the judges of the court of common pleas for the county of Hamilton aforesaid, agreeable to lawful notice given on Ethan Stone, Esquire, of Cincinnati, for the purpose of perpetuating the testimony of the said David Zeigler, for purpose of perpetuating his testimony concerning the title and claim of Gen'l Josiah Harmer to a certain parcel of ground near the post office, in the eastern part of the town of Cincinnati. This deponent saith, that he came to Cincinnati in the year 1790: that General Josiah Harmer informed this deponent that he had purchased several lots from John Cleves Symmes, Esquire. This deponent left Cincinnati shortly afterwards on a campaign against the Indians, and does not recollect that those lots were at time improved, but when this deponent returned to Cincinnati the year following, he knows the said Josiah had several lots improved and under high cultivation, lying east, and adjoining fort Washington, on which he had built a summer-house, and also several other lots between fort Washington and the Ohio river, or more immediately between the said summer-house and the Ohio river; and that the said lots had continued to be called General Harmer's lots until the present date; and the said General Harmer was generally reputed the owner of the aforesaid lots.

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Quest. by Mr. Stone. Do you know, of your own personal knowledge, that those lots cultivated, were the same that were deeded to General Harmer?

Answer. I do not know for a certainty that they were the same, but believe they are.

Question by Mr. Brown, General Harmer's counsel. Are not those the same lots, part of which are now in the enclosure of Mr. Stone, near the post office, which were occupied and cultivated by General Harmer?

Answer. They are.

Question by Mr. Stone. Do you know if General Harmer's enclosure took in the principal part of that block of lots that any enclosure is on?

Answer. I think it did. And further this deponent saith not.

DAVID ZEIGLER.

Sworn and subscribed the day and year first written, before us,

JAMES SILVER,
JOHN MATSON.

Deposition of Richard Allison.

STATE OF OHIO, *Hamilton county, ss.*

The deposition of Richard Allison, taken on the seventeenth day of February, A. D. 1809, at the dwelling-house of Mr. James Conn, in the town of Cincinnati, before James Silver and John Matson, two of the judges of the court of common pleas for the county of Hamilton aforesaid, agreeable to lawful notice served on Ethan Stone, Esquire, of Cincinnati, for the purpose of perpetuating the testimony of the said Richard Allison, for the purpose of perpetuating testimony concerning the title and claim of General Josiah Harmer to a certain parcel of ground near the post office, in the town of Cincinnati. This deponent saith, that General Josiah Harmer was in possession of several lots lying east of fort Washington, in the year 1790—he thinks as many as four lots, and occupied them for a garden, and built a summer-house on said lots; and also several lots more, lying south-east of said fort Washington, and between the fort and the river Ohio. This deponent thinks there were four lots in the last mentioned parcel of lots, and that the said Josiah had the last mentioned lots planted with corn, &c.; the said Josiah informed this deponent that he purchased the abovementioned lots of John C. Symmes, Esquire. And this deponent saith, that he hath understood and believed the said lots to be the property of said Josiah to this date, and that the said Josiah continued in the occupancy of the said lots during his stay in this country.

Question by General Harmer's counsel. Do you know who labored or worked those lots for General Harmer?

Answer. A man by the name of Jones, that lived in Gen'l Harmer's family.

Question by Mr. Stone. Do you know how many lots General Harmer laid claim to, which were not covered by the garrison reservation?

Answer. I do not. The garrison reservation was not at that time known, nor do I now know the limits of that reservation. And further this deponent saith not.

R. ALLISON.

Sworn and subscribed to the day and year first written, before us,

JAMES SILVER,
JOHN MATSON.

Recorded 9th March, 1809.

STATE OF OHIO, *Hamilton county, sct.*

I, Griffin Yeatman, recorder in and for the county of Hamilton aforesaid, duly appointed and sworn, do certify that the foregoing depositions, given by John C. Symmes, Nicholas Jones, David E. Wade, David Zeigler, and Richard Allison, are true copies taken from the records of said county, as recorded on the 8th and 9th of March, 1809, in book F, No. 3, pages 30, 31, and 32.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal office, at Cincinnati, this seventh day of March, A. D. 1829.

GRIFFIN YEATMAN, *Recorder.* [L. S.]

Notice to take deposition of John Matson.

Circuit court of the United States of America for the district of Ohio.

LESSEE of Harmer's heirs,
vs.
DAVID GWYNNE & GEORGE MORRIS. } *Ejectment.*

The defendants, and their attorney, will please to take notice, that on Friday next, the ninth day of May, instant, the deposition of John Matson will be taken at the office of Caswell and Starr, in Cincinnati, between the hours of nine o'clock in the morning and six in the evening of that day, to be read in evidence on the trial of the above cause. May 6th, 1829.

CASWELL & STARR,
Attorneys for plaintiff.

Received copy of this notice.

C. HAMMOND, *attorney for deft.*

Deposition of J. Matson.

Circuit court of the U. States for the district of Ohio, ss.

LESSEE of Harmer's heirs
vs.
DAVID GWYNNE & GEORGE MORRIS. } *Ejectment.*

Be it remembered, that, on the ninth day of May, 1829, before me, Enos Woodruff, one of the associate judges of the court of common pleas for the county of Hamilton, in the State of Ohio, came John Matson, at the office of Caswell and Starr, in Cincinnati, who, after being carefully examined, cautioned, and sworn to testify the whole truth, does depose and say, that, on the 17th day of Feb'y, 1809, himself and James Silver, two of the associate judges of the court of common pleas at that time, were called upon to take the depositions of John Cleves Symmes, David Zeigler, Richard Allison, and Nicholas Jones, for the purpose of perpetuating their testimony to certain lots of ground claimed by General Harmer; and that the aforesaid depositions of John Cleves Symmes was written by himself, with the exceptions of the interrogatories and answers, which are in the handwriting of Judge Silver, all of which were done in my presence. The

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caption of the deposition of David Zeigler was written by myself, and his deposition by Judge Silver, in my presence. The caption of the deposition of Nicholas Jones was also written by me, and the rest of the depositions by Judge Silver, in my presence. The deposition of Doct. Richard Allison is altogether in the hand-writing of Judge Silver, and was likewise taken in my presence. All of said depositions purport to have been recorded in the recorder's office of Hamilton county—those of Symmes, Zeigler, and Jones, on the 8th day of March, 1809, in book F, for sundries, pages 30, 31, 32; and that of Richard Allison, March 9th, 1809, in book F, No. 1, page 32, by John W. Brown, recorder of Hamilton county. The original deposition of John Cleves Symmes referred to, is marked on the back with the letter F, in red ink; that of David Zeigler with the letter G; that of Richard Allison with the letter H; and that of Nicholas Jones with the letter I, all in red ink. And further this deponent says not.

JOHN MATSON.

Acknowledgement, consent, &c. as to taking depositions.

I have been present, upon notice, of the taking of the foregoing depositions, and acknowledged notice. I have agreed also that the copies of the depositions enclosed, are those referred to in the deposition as originally taken, and are true copies.

C. HAMMOND,
Attorney for defendants.

STATE OF OHIO, *Hamilton county.*

I, Enos Woodruff, one of the associate judges of the court of common pleas of the county aforesaid, do hereby certify that the foregoing deposition of John Matson, which he has subscribed with his own hand, was taken before me, at the time and place specified in the attached notice: that said Matson was carefully examined, cautioned, and sworn to testify the whole truth: that said deposition was reduced to writing by myself, in presence of deponent and the parties to the cause. I further certify, that I am not attorney or counsel for either of the parties, or interested in the event of the suit. In testimony whereof, I have hereunto subscribed my name, and affixed my private seal, this ninth day of May, 1829.

ENOS WOODRUFF, [L. S.]
Associate judge of Hamilton county.

To the admission of which depositions, the defendants object, upon the ground that the said depositions of Nicholas Jones, David Zeigler, and Richard Allison, were not taken and certified in such manner as to make them legal evidence; which said objections were overruled, and the said depositions admitted to be read in evidence; to which opinion of the court in admitting said depositions, the said defendants except, and pray the court to seal this their bill of exceptions. The plaintiffs then read in evidence the deposition of Jesse Hunt, except those parts which relate to what was told him and shewn him by John Cleves Symmes. They also read in evidence the deposition of David Lewis, Christopher Carey, William Berry, William Orcut, and John Riddle, which are as follows:

Notice to take deposition of Jesse Hunt.

Circuit court U. S. district of Ohio.

LESSEE of Harmer's heirs,
vs.
DAVID GWYNNE & GEORGE MORRIS.

The defendant in this cause will take notice, that the deposition of Jesse Hunt will be taken at the office of Caswell & Starr, on Main street, Cincinnati, Monday, the 19th of January inst. between the hours of ten o'clock, A. M. and six o'clock, P. M. of that day, before Enos Woodruff, one of the associate judges of the court of common pleas of Hamilton county, to be read in evidence on the trial of the above cause. January 14th, 1829.

CASWELL & STARR, *for pl'ffs.*

I served this notice on the within defendants, by leaving with each of them a copy of this said notice. January 14th, 1828.

HARVEY HALL.

Hunt's deposition.

Circuit court of the United States for the district of Ohio.

STATE OF OHIO, *Hamilton county, ss.*

LESSEE of Harmer's heirs,
vs.
DAVID GWYNNE & GEORGE MORRIS.

Be it remembered, that on the 19th day of January, 1829, at the office of Caswell & Starr, in Cincinnati, between one and two o'clock in the afternoon, before Enos Woodruff, Esquire, one of the associate judges of the court of common pleas for the county of Hamilton aforesaid, who is not of kin or counsel to either of the parties above mentioned, or interested in the event of the suit, came Jesse Hunt, who being carefully examined, cautioned, and sworn to testify the whole truth, did depose and say, that, in the month of March, 1789, he first came to Cincinnati, and since 1792 has made Cincinnati his principal place of residence, and was occasionally here before that time. I was not well acquainted with the location of the town lots until I had became a permanent resident, and some time afterwards.

Q. by plaintiff's counsel. Will you state about what time you was first acquainted with the place called Ruffin's corner?

Answer. I suppose I must have been acquainted with it about the year 1793.

Q. by the same. When did you first know any thing of the street going from the river back to Ruffin's corner?

Answer. I do not know that I can be positive; some time after the house was built I understood there was a street there; some years after that, I heard Arthur St. Clair, junr. say that he intended stopping it up, for he owned the land.

Q. by same. In the survey and location of lots east of Broadway, made by Judge Symmes, in the year 1790 or 1791, was there a space of ground on the river which he did not survey into lots on account of its being appropriated for the use of the troops?

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Answer. I cannot give you any information on that subject.

Q. by same. How early do you know there was a reservation for the use of the garrison, and that it extended to the river?

Answer. My impression is, that I was apprised of the reservation as early as the year 1792, and that it extended to the river.

Q. by same. Will you state if Judge Symmes ever told you that he had sold General Harmer lots lying east of where Ludlow street now is, and fronting on the river?

Answer. After I became the agent for General Harmer, Judge Symmes took me on the ground and showed me where he supposed General Harmer's lots lay, but Judge Symmes had no plat or corner to guide him by but his eye, and pointed out a spot where he supposed Harmer's lots commenced, but could not tell certain, having nothing to guide him but the remains of the old garrison, and he thinks this was prior to the time Ludlow street was laid out; and he said further, that he could have pointed out the spot had the garrison been standing. I cannot pretend to say whether the lots on the river were all east of Ludlow street, or whether Ludlow street run through them.

Q. by the same. After the reservation was surveyed into lots, did Judge Symmes ever point out to you where Harmer's lots lay on Front street?

Answer. I do not think I ever had any conversation with Judge Symmes on that subject; after that survey was made, I am confident I had not.

Q. by the same. Will you state if Symmes ever told you that there were any lots he had sold to St. Clair lying east of Harmer's lots, on Front street?

Answer. I think it probable he did tell me so, but I am not certain; and, at the time, we were on the ground together.

Q. by the same. Will you state if it be your understanding that the lots which he spoke of were situated west of Ruffin's corner?

Answer. My understanding was that the lots of St. Clair and Harmer both lay west of Ruffin's corner.

Q. by the same. At the time you had this understanding, is it now your impression that there was one or more lots belonging to St. Clair on Front street?

Answer. My impression is that there was more than lot.

Q. by the same. Have you any recollection that there was an old cellar on St. Clair's lots on Front street? and will you designate where that cellar was as near as you can?

Answer. I recollect that there was a cellar that had been dug by Mr. St. Clair's order, as I understood, and that said cellar was westerly of Ruffin's corner, and easterly from where I supposed Harmer's lots lay.

Q. by same. Is a plat of lots now shown you, and on which you had written your name under that of William Lytle, and dated the 25th of April, 1808, in the handwriting of Judge Symmes?

Answer. Most of the handwriting which appears on it is in his handwriting, particularly those lots which are written on as General Harmer's, are in his handwriting; my opinion is the figures are not in his handwriting, but do not pretend to know.

Question by defendants' counsel. Was not the garrison reservation, as it originally stood, situate between what is now Ludlow street and Broadway?

Answer. Yes.

Question by same. Is not Ludlow street laid out on the garrison reservation, and its eastern boundary? or if not, is not some part of it on the reservation?

Answer. My impression is that Ludlow street was laid off on the eastern boundary of the reservation, and formed part of it, but of this I do not know positively.

Q. by same. Did not the garrison reservation extend between Ludlow street and Broadway, as was located on the river?

Answer. Yes, it did.

Q. by same. Was not the front of the garrison between Ludlow street and Broadway?

Answer. It was.

Q. by the same. What proportion of Harmer's eight lots did you understand was lost by the garrison reservation?

Answer. My own opinion was two lots; I think I wrote to Mrs. Harmer that about 6 lots would be saved.

Q. by the same. Did not Symmes tell you that the Government having claimed the gaarison reservation, caused an interference with his sale to Harmer, as well as his sale to others?

Answer. I think in a conversation I had with said Symmes, when on the ground, he observed, the claim of the Government to the garrison reservation interfered with several of the lots he had sold, and those sold to Harmer were a part of them.

Q. by the same. At what time did your agency commence?

Answer. I cannot tell at what time, but suppose in 1801 or 1802.

Q. by the same. In what manner, by whom, and at what time, was the agency taken out of your hands?

Answer. My agency ceased on the arival of George W. Jones, I suppose in the year 1821; he brought a letter to me from Mrs. Harmer notifying me that Mr. Jones would be the agent in future.

Q. by the same. Did George W. Jones, Esquire, as the agent, settle with you for the expenses which you had previously incurred?

Answer. He did.

Q. by the same. What was the first or original name of what is now called Cincinnati?

Answer. I understood that Cincinnati was originally called Losantiville, and was told that the term signified a town opposite the mouth of a river.

Q. by the same. Did you understand, during your agency for Harmer's heirs, that, but for the interference of the garrison reservation, Harmer's upper block would have enclosed the ground on which Doct. Drake's brick-house now stands, or part of it?

Answer. I did suppose that the upper block would come somewhere near where Doct. Drake's house now stands.

Q. by the same. Does Doct. Drake's house stand west of Ludlow street, on the hill?

Answer. It does.

Q. by plaintiff's counsel. Do you know whether Judge Symmes ever surveyed and sold lots west of the reservation and east of Broadway?

Answer. I was informed that Judge Symmes sold a number of lots within the reservation to the officers of the army, among whom was General Harmer. I supposed that only a part of Harmer's lots came within the reservation.

Q. by defendant's counsel. Did you not understand that Gen'l St. Clair, after he took command, prostrated the improvements in the bottom, made by Harmer, and on which he had raised corn?

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Answer. I understood he did.

Q. by the same. Was it not your understanding that the improvements was supposed to be on Harmer's lower lots?

Answer. Yes, I did. And further saith not.

JESSE HUNT.

STATE OF OHIO, *Hamilton county, ss.*

I, Enos Woodruff, one of the associate judges of the court of common pleas for said county of Hamilton, do hereby certify that the foregoing deposition of Jesse Hunt, which he has subscribed with his own hand, and taken before me, at the office of Caswell & Starr, in Cincinnati, on the 19th day of January, 1829, between the hours of one and two o'clock in the afternoon; that said Hunt was carefully examined, cautioned, and sworn to testify the whole truth in the above entitled cause; and that said deposition was reduced to writing by me in the presence of the deponent, and subscribed by him. And I further certify, that I am not of counsel or attorney for either of the parties, nor am I interested in the event of the suit. In testimony whereof, I have hereunto subscribed my name, and affixed my private seal, this 20th day of January, 1829.

ENOS WOODRUFF, [SEAL.]
Associate judge of Hamilton county.

Notice of Lewis's depo.

Circuit court of the United States for the district of Ohio.

LESSEE of Harmer's heirs,
vs.
DAVID GWYNNE & GEORGE MORRIS.

The defendants in the above cause will take notice, that on Saturday, the 21st day of March, instant, at the office of Caswell & Starr, in Cincinnati, between the hours of two and seven o'clock, P. M. the deposition of David Lewis and others will be taken, to be read as evidence on the trial of the above cause. 19th March, 1829.

CASWELL & STARR,
Attorneys for plff.

A true copy of the above was left by me with Mr. Gwynne. March 19th, 1829.

T. A. JONES.

Lewis's deposition.

Circuit court of the United States for the district of Ohio.

LESSEE of Harmer's heirs,
vs.
DAVID GWYNNE & GEORGE MORRIS.

Be it remembered, that, on the 21st day of March, 1829, at the office of Caswell & Starr, in Cincinnati, before me, Enos Woodruff, an associate judge of the court of common pleas of the county of Hamilton, and State of Ohio, came David Lewis, exceeding the age of sixty years, and after being carefully examined, cautioned, and sworn to testify the whole truth,

deposeth and saith, that he landed in Cincinnati in January, 1794; a few months after his arrival, he became acquainted with the place now called Ruffin's corner, east of Broadway, and on Front street, on the north side of Front street. Was well acquainted with Ruffin's corner, and frequently passed it in going to Wade's and Hunt's tanyard, before the house was built. It is situate on the corner of Front street and the street running back to Wade's tanyard, on the east side of said street. The two lots next west were called the St. Clair lots, as he always understood; some three or four years ago, said lots were fronting on the said street next the river. Does not know whether Harmer's lots were adjoining the St. Clair lots or not; understood from common fame that St. Clair had lots, and also General Harmer, but where Harmer's lots were, he cannot say.

Question by plaintiff's counsel. Will you state whether you ever understood from Judge Symmes or others, that General Harmer owned lots front on the street next the river?

Answer. I never did from Judge Symmes, but I did from others.

Q. by same. Will you state whether you everu nderstood the two lots that belonged to General Harmer lay next to the lots of St. Clair?

Answer. At an early period I did not, but since I have.

Q. by same. Will you state, as near as you can, how long it is since you understood that the lots of General Harmer lay next the two lots of St. Clair?

Answer. I cannot say how long, but a good many years since.

Question by same. Will you state whether you ever understood from any body, at any time, that the lots lying next the two lots lying below Ruffin's corner, belonged to General Harmer?

Answer. I do not remember of any body's ever designating and pointing them out to me; the idea I had was, they lay below in a pond.

Question by same. Will you state whether you have any recollection of an old cellar just below Ruffin's corner? and if so, how far below the corner?

Answer. I have a recollection of it: it was within the bounds of the two lots.

Question by same. According to your present impression, how far should say the cellar was north of Front street, or the street next the river?

Answer. It was at the left hand as you go up the river, and with the boundaries of the two lots.

Question by same. Have you lately been on the ground to ascertain, as near as you could, Ruffin's corner, and the two St. Clair lots, of which you have spoken?

Answer. I have.

Question by same. Will you state whether you was able, when lately on the ground, to point out the two St. Clair lots, or where abouts they lay according to your old recollection?

Answer. *I.* Yes.

Question by same. When on the ground did you learn the name of the street running back from the river at Ruffin's corner?

Answer. I do not recollect that I did.

Question by defendants. Do you know that Gov. St. Clair did not claim and sell, as early as 1791, the lots lying west of the lots you have spoken of, and the lots lying northwest of the same, as far west as the garrison reservation?

Answer. I was not here until 1794. I do not know whether he did or did not.

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Question by same. Did you not understand that Judge Symmes sold to Gov. St. Clair a considerable number of lots in the bottom, at an early day, contiguous to Major Ruffin's?

Answer. No, I did not.

Question by same. Do you know the size of the lots on Front street, west of Major Ruffin's, whether each lot was 150 or 200 feet, or more or less, in front?

Answer. I do not know what size they were in front or in rear.

Question by same. Do you know whether they contained one or two acres each?

Answer. I do not.

Question by same. Do you know whether there were 3 or 4 lots, or more or less, on Front street, between Ruffin's corner and Broadway?

Answer. I do not know the particular number of lots, but should conclude there were more.

Question by same. Do you know that St. Clair claimed 2 lots only west or north of Ruffin's corner?

Answer. I cannot tell.

Question by same. Was the front of fort Washington between Broadway and the first street east of Broadway, and running parallel to it?

Answer. Fort Washington fronted the river, and was on the east side of Broadway.

Question by plaintiff's counsel. A map is now shown you with the name of Thomas Henderson on it—have you examined that map, and does it correctly denote the situation of the block-houses, Ruffin's corner, and other objects, according to your recollection when you first knew their situation?

Answer. I have examined the map, and it does denote the situation of the 4 block-houses, Ruffin's corner, the cellar, and the summer-house, agreeably to my memory and recollection.

Question by same. Will you state whether, within a day or two past, you have been upon the ground to point out the former situation of those objects according to your recollection?

Answer. I was.

Question by same. Will you state whether you was able, in your own mind, to fix upon those objects as you believed them to have been, without consulting others?

Answer. Yes, I was. I pointed out their situation without consulting others.

Question by defendants' counsel. Did not the 4 block-houses that originally stood in the 4 corners of the garrison form, according to the best of your recollection, a square?

Answer. They appeared so.

Question by same. Was not the two west block-houses on a line of what was then called Eastern row?

Answer. They both stood on the east side of what is now called Eastern row, and some distance from it.

Question by plaintiff's counsel. Will you state whether you was acquainted with the tract of land called the Garrison reservation?

Answer. Yes, I have a knowledge of it.

Q. by same. Will you state whether it be your understanding whether the lots of General Harmer were east or west of that tract of land?

Answer. It is my impression they were to the east of it.

Q. by same. Should you say that the east side of the reservation extended much, if any, further than the east side of Ludlow street?

Answer. I cannot tell; I did not know the name of the streets.

Q. by same. Will you state whether the east side of the Garrison reservation was some distance below the old cellar?

Answer. I ever understood it to be so.

Q. by defendants' counsel. Can you state whether it was one, or two, or three hundred feet, or more or less?

Answer. I cannot. And further saith not.

DAVID LEWIS.

Taken, sworn, and subscribed before me, this 21st day of March, 1829.

ENOS WOODRUFF, *A. J. H. C.*

The further taking depositions in this cause is, by consent of parties, adjourned to Friday next, at 9 o'clock, A. M.

STATE OF OHIO, *Hamilton county.*

I, Enos Woodruff, one of the associate judges of the court of common pleas for said county of Hamilton, do hereby certify that the foregoing deposition of David Lewis, which he has subscribed with his own hand, and taken before me, at the office of Caswell & Starr, in Cincinnati, on the 21st day of March, 1829, between the hours of one and six o'clock in the afternoon; that said Lewis was carefully examined, cautioned, and sworn to testify the whole truth in the above entitled cause; and that the said deposition was reduced to writing by me in the presence of the deponent, and subscribed by him. And I further certify that I am not of counsel nor attorney for either of the parties, nor am I interested in the event of the suit. In testimony whereof, I have hereunto subscribed my name, and affixed my private seal, this 21st day of March, 1829.

ENOS WOODRUFF, [SEAL.]
Associate judge of Hamilton county.

Notice of survey.

Circuit court U. S. D. Ohio.

LESSEE of Harmer's heirs,
vs.
DAVID GWYNNE & GEORGE MORRIS. } *Ejectment.*

The defendants in this cause will take notice, that, on Monday, the 30th day of March, inst., the lessors of the plaintiff will proceed with Thomas Henderson, a surveyor, to make a survey of the premises in controversy, situate on Front street, in Cincinnati, and to lay down such objects as may be thought necessary to ascertain the true situation, to commence about ten o'clock, A. M.; and, on Tuesday, the next day, the deposition of William H. Olcut and others will be taken, at the office of Caswell & Starr in Cincinnati, to be read as evidence on the trial of the above cause; which depositions will be taken between the hours of ten o'clock, *o'clock*, A. M., and six o'clock, P. M., of that day, Tuesday, the 31st March, inst., and to commence about ten o'clock, A. M., 27th day of March, 1829.

Signed CASWELL & STARR,
Att'ys for plaintiffs.

The notice given yesterday is superceded. C. & S.

27th March, 1829. Rec'd the original, of which the within is a copy.
DAVID GWYNNE.

Cary's deposition.

Circuit court of the United States for the district of Ohio, ss.

Lessee of Harmer's heirs,
vs.
David Gwynne & George Morris. } *Ejectment.*

Be it remembered, that on the 31st day of March, 1829, before me, Enos Woodruff, one of the associate judges of the court of common pleas for Hamilton county, in the State of Ohio, came Christopher Cary, at the office of Caswell & Starr, in Cincinnati, who, after being carefully examined, cautioned, and sworn to testify the whole truth, does depose and say, that, some 21 or 22 years ago, he was employed by Ethan Stone to enclose a certain piece of ground, and he began the fence about ten rods below Ruffin's corner, and run westwardly on the Columbia road, on the north side about 100 yds.; (by which he means the first street from the river;) thence we run the fence northerly seventy or eighty yards; thence easterly about 100 yards; thence southerly to the place of beginning, being nearly a square.

Question by defendants' counsel. Do you remember an old cellar in the neighborhood of the ground you enclosed? if you do, state the situation of it?

Answer. It appears to me it was on the other side of the street, towards the river, and nearly opposite where I begun the fence.

Q. by same. Have you lately been on the ground?

Answer. Yes, yesterday.

Q. by same. Did you observe where Ludlow street now runs?

Answer. I did.

Q. by same. Will you state whether Ludlow street now runs through any part of the ground you fenced?

Answer. I think it runs through the westerly part of it.

Q. by same. Did any person warn you, when putting up the fence, to desist?

Answer. Jesse Hunt and Major Zeigler came on the ground, and told him he had better not make the fence; that there would be a law suit for the ground; that it belonged to Gen'l Harmer. Major Zeigler said he was agent for General Harmer.

Question by same. Did you measure the distance from Ruffin's corner to the place where you begun the fence?

Answer. I did not.

Question by plaintiffs. Can you state whether at this time you understood from Zeigler or Hunt that Harmer owned several lots?

Answer. Yes; I understood from them there were three or four lots which were on the bottom; and on the northeast where the summer-house was, there were other lots belonging to Harmer.

Q. by same. Will you state whether you embraced within the fence you made, ground which you understood from Hunt and Zeigler belonged to General Harmer?

Answer. Yes, I did, something like three or four lots which belonged to General Harmer.

Q by same. Will you state whether you was acquainted with the situation of the summer-house?

Answer. I was. It stood west of the street which runs northerly from Ruffin's corner, I think about 50 yards, or about half way between that street and the garrison.

CHRISTOPHER CARY.

Berry's deposition.

Same time, came William Berry, who, in like manner being carefully examined, cautioned, and sworn, deposeth and saith, that he came to Cincinnati the spring after St. Clair's defeat, with a detachment of troops, and was put in the garrison, and staid there about one year. Understood there were lots on the bottom called General Harmer's lots; they lay the upper side of what is called Ludlow street.

Question by plaintiffs' counsel. Will you state whether you were acquainted where Ludlow street now runs?

Answer. I do. I helped to make it.

Question by same. Will you state, if you can, what number of lots, situated on the bottom, you understood belonged to Gen'l Harmer?

Answer. I cannot say how many, but understood he had lots there. Witness says, that, as early as 1795, or thereabouts, he was acquainted with an old cellar not a great way below Ruffin's corner, between the Columbia road and the river. Was acquainted the situation of the summer-house on the hill; thinks it stood on Strong's lot. Has been on the ground to-day, and measured the distance from the lower block-house, near Drake's corner, to where he believes the summer-house stood; the distance is about one hundred and thirty feet eastwardly. Drake's corner is the corner of Third and Ludlow street; said block stood on Drake's corner.

Question by defendant. Did you ever see the lots on the bottom, called Harmer's lots, surveyed?

Answer. No: I never did.

Question. How, then, do you know that Harmer's lots, on the bottom, were located above or eastwardly of what is called now Ludlow street?

Answer. I never knew where they were located, except by hearsay from other people.

his
WILLIAM × BERRY.
mark

Orcutt's deposition.

Same time and place, came William Olcut, who also was carefully examined, cautioned, and sworn to testify the whole truth, deposes and says, he came to Cincinnati in the year of 1789, in the month of August, with other troops. Soon afterwards, they proceeded to clear the ground and build the block houses in fort Washington: staid in Cincinnati three or four months, was then sent off on a command, and staid 8 months, and returned to Cincinnati: was well acquainted with the situation of the garrison and the block-houses: there were four block-houses in the garrison, one at each corner, and one in the artificers' yard: have this day been on the ground where the garrison stood, and was, in my own mind, able to fix the corners: the southeast block-house stood on Drake's corner, at the junction of Ludlow and Third streets: there was a kind of a trace coming up from the river, on the east side of the garrison. Witness further says, that, when on the

ground this day, he pointed out to Mr. Guest where the summer-house stood: there was a place on the river called the Stone landing, 10 or 15 rod below Ruffin's corner: was acquainted with a man by the name of Jones who was about the garrison, who cultivated a garden near the summer-house for General Harmer, and had free access to the garrison.

Question by defendants' counsel. What was the position of the block-houses in the artificers' yard in relation to the garrison?

Answer. It was to the west of the garrison. The artificers' yard was somewhat in the form of a triangle, and the block-house was on the western corner of the triangle.

Q. by same. What width do you estimate *to* garrison to have been?

Answer. About 120 feet; there were six barrack rooms in each row, about 20 feet each.

Q. by same. How long since you have been on the ground before last week?

About 30 years. And further not.

WM. H. ORCUTT.

Mr. Orcutt further states, that there were three barrack rooms on each side of the gate fronting the river.

WM. H. ORCUTT.

STATE OF OHIO, *Hamilton county, ss.*

I, Enos Woodruff, one of the associate judges of the court of common pleas of the county aforesaid, do hereby certify that the foregoing depositions of Christopher Cary, William Berry, and William Orcutt, which they have subscribed with their own hands, were taken before me, at the office of Caswell and Starr, in Cincinnati, on the 31st day of March, 1829, between the hours of ten A. M. and six P. M.; that said deponents were carefully examined and cautioned, and sworn to testify the whole truth in the foregoing entitled cause; and that said depositions were reduced to writing by me in presence of the deponents, and subscribed by them. I further certify, that I am not attorney or counsel for either of the parties, or interested in the event of the suit. In testimony whereof, I have hereunto subscribed my name, and affixed my private seal, this 31st day of March, 1829.

ENOS WOODRUFF, [SEAL.]
Associate Judge of the court of common pleas of Ham'n cy.

White's deposition.

Circuit court of the United States for the district of Ohio, ss.

LESSEE of Harmer's heirs,
vs.
DAVID GWYNNE & GEORGE MORRIS. } *Ejectment.*

Be it remembered, that, on the first day of May, 1829, before me, Enos Woodruff, one of the associate judges of the court of common pleas for the county of Hamilton, in the State of Ohio, came Jacob White, at the office of Caswell & Starr, in Cincinnati, who, after being carefully examined, cautioned, and sworn to testify the whole truth, does depose and say:

Question by plaintiffs. At how early a period were you acquainted with the northwest corner of Front and Lawrence street, designated *designated* as Ruffin's corner?

Answer. In the spring of seventeen hundred and ninety.

Q. by same. Who was the reputed owner of the lots or half block directly west of Ruffin's corner, situated on Front and Lawrence streets, in the year seventeen hundred and ninety-one, or about that period?

Answer. I understood that the block between Ruffin's corner and Broadway belonged to Gov. St. Clair and General Harmer.

Q. by same. Do you know who owned the two lots west, and nearest to Ruffin's corner? or can you tell which lots were reported to belong to Gov. St. Clair?

Answer. I do not recollect what lots belonged to Gov. St. Clair or General Harmer; the block was said to belong to those two gentlemen. There was a house on Ruffin's corner, and some improvements on the west side of Broadway; the intermediate lots were principally open.

Q. by same. Have you any knowledge of an old cellar, dug by Gov. St. Clair near Ruffin's corner? if so, you will examine this map and see if it is correctly located.

Answer. I often saw the cellar, and believe it is correctly laid down on the map, now before me, as made by Mr. Guest, agreeably to my memory.

Q. by same. Have you knowledge of the summer-house erected by General Harmer on one of his lots east of fort Washington? and is the situation of said summer-house correctly laid down on the map before you, made by Mr. Guest?

Answer. I remember the house; and the situation, as laid down on the map, is correct, as far as my memory serves.

JACOB WHITE.

Riddle's deposition.

At the same time and place, came John Riddle, who being carefully examined, cautioned, and sworn to testify the whole truth, does depose and say:

Q. by plaintiff. At how early a period were you acquainted with the northwest corner of Front and Lawrence streets, designated as Ruffin's corner?

Answer. In 1790, at which time I understood that Gov. St. Clair owned the two lots or half block next west of Ruffin's corners. I also recollect a cellar on one of these lots, dug by St. Clair. I understood that St. Clair and Harmer owned the block between them, but I did not know the size of the block, nor number of lots in it. I did not understand whether Gov. St. Clair's other lots lay adjoining on the west, or whether they lay back of them.

Q. by same. Have you any recollection or knowledge of an old cellar dug by Gov. St. Clair near Ruffin's corner?

Answer. I have knowledge of said cellar, and I think it is pretty correctly laid down on the map referred to; it might have been a little nearer Ruffin's corner. I also recollect a summer-house east of the garrison, and not a great distance from the one designated on the map, but could not pretend to designate its precise location within 100 feet.

Q. by defendants. Was the cellar you named intended for a building as a family residence by Gov. St. Clair?

Answer. I understood by Judge Symmes that he intended it for a family residence.

Q. by same. Did you not afterwards understand the reason why the buildings were not erected, was a fear that part the lots sold by Symmes to St. Clair would come within the garrison reservation?

Answer. I understood that was the reason.

JOHN RIDDLE.

Henderson's deposition.

Same time and place, came Thomas Henderson, who being first carefully examined, cautioned, and sworn to testify the whole truth, does depose and say:

Question. How long have you lived in Cincinnati? During what years were you surveyor and recorder of Hamilton county, in which Cincinnati is situated? Was your course of business calculated to give you a familiar acquaintance with the different divisions of town or building lots in the town or city of Cincinnati?

Answer. I came to Cincinnati in the spring of eighteen hundred and six. In eighteen hundred and seven, I was appointed county surveyor for Hamilton county, and subsequently surveyor for the corporation of Cincinnati. I held these offices about seven years. In 1814, I was appointed recorder of the county, and served in that capacity seven years: from the fulfilment of the duties of these several offices, I believe I have a general knowledge of the different divisions of town or building lots in the town of Cincinnati.

Question. What knowledge have you of the division of lots laid out by John Cleves Symmes? When were those lots laid off? Did you record the Symmes' division of lots in the county records? Is the plat of lots attached to this deposition, number from to fifty-seven, a correct representation of the lots laid off by Symmes? Have you ever surveyed said lots?

As to laying off these lots I have no knowledge further than from information; they were laid out prior to my coming to Cincinnati. In the year, I think 1811, there was a disturbance arose in relation to the common or explanade in front of that part of the town laid out by the Judge as aforesaid. The Judge presented to me a plan, in his own hand writing, which I believe to be now before me, and marked W. I.; this copied at his request, and it was made a matter of record. I was not recorder at the time, and consequently did not record it. The Judge, at that time, entered into a full account of his laying out the lots on that part of the town, and of his sale to Josiah Harmer.

Question. What knowledge have you of fifteen acres of land formerly held by the United States for the accommodation of fort Washington? What were the limits and bounds of fort Washington fifteen acres? Did you survey these fifteen acres into small building lots for the United States? Does the plat of lots attached to this deposition correctly represent the said lots laid off for the United States? Is the east side of Ludlow street the eastern boundary of said fifteen acres? and does it interfere with the said lots laid off by Symmes in the manner represented by the map, hereto attached?

To this question, I have partially given an answer in a former question. The boundaries of the 15 acres, as I have before stated, was determined upon the best information and evidence that could be then obtained. The boundaries were laid down as expressed on the map, by me returned to the surveyor general's office, and by him to the Treasury of the United States.

I have made a survey lately of the reservation aforesaid, and the connection therewith of the lots above, as laid out by Judge Symmes, shewing their interference. Joseph Gest, the city surveyor, has also, under an order of court, made a survey of the premises in question and controversy, both of which maps are now before me. The eastern line of Ludlow street, as laid out by me, and as laid down on the accompanying maps, was, by all concerned, and I believe is now, considered the upper line of the 15 acres, reserved by the U. S. as aforesaid. This upper line of Ludlow street does interfere with the lots as laid out by by Judge Symmes in the manner as represented on the map, as I understood the matter.

Question. How long have you known Ruffin's corner, in the east part of Cincinnati? It is well established and correctly represented on this map?

Answer. I have been acquainted with Ruffin's corner about 23 years. I have served in the capacity of Cincinnati town surveyor and county surveyor of Hamilton county, Ohio, holding those offices about seven years; and, in my duties as surveyor aforesaid, I constantly, when employed in the neighborhood, considered Ruffin's corner as a standard corner; I believe it has universally been so considered.

Question. Do you know the position of old fort Washington on said fifteen acres?

The fifteen acres reserved by Congress, including the site of fort Washington, I believe I am well acquainted with. Early in the year 1807, I was employed by the surveyor general, in pursuance of an order received from the Secretary of the Treasury, to determine the boundaries of the said 15 acres, and subdivide the same into lots. In determining the boundaries, we called in the recollections and information of David Wade, Judge Symmes, Daniel Symmes, Joel Williams, Jesse Hunt, and others.

Question What part of lots numbered two and twenty-three, as designated on this map, and lying east of Ludlow street, do you now understand to be now in controversy in this cause?

Question. What lots do you understand to be included the conveyance dated seventeen hundred and ninety one, from John Cleves Symmes to General Josiah Harmer, as designated on this map, and on Symmes' division of lots?

I understood from the declarations of Judge Symmes, Major Zeigler, and others, that the lots numbered on the recorded plan 1, 2, 23, 24, 27, 28, 45, and 46, were the lots conveyed by the conveyance referred to by John C. Symmes to General Josiah Harmer?

Question. Have you ever seen a cellar, near Ruffin's corner, dug by Gov. St. Clair? and what was its position?

I have seen a hollow west of Major Ruffin's, which I have understood to have been dug for a cellar.

Question. Can you designate the position, upon this map, of the summer-house erected by General Harmer?

I have laid down the summer-house on the map made by me, to the best of my recollection, and from the information of others.

Question. Does this map represent the lots and streets as they have been considered and established?

The map made by me, and which is now before me, I made from actual survey, and believe it to be a correct and true representation of that part of the town as they have been considered and established.

Question. Should you understand the south boundary of the lower block of Harmer's lots to be the north or south side of east Front street?

I have no hesitation in answering, that my opinion, and, from belief, is that the south side of the lower block of lots, as laid out by Judge Symmes, is the north line of east Front street.

Question should you understand the said deed from Symmes to Harmer as conveying entire lots as originally laid off by Symmes? Was it usual, at that time, seventeen hundred and ninety-one, to convey parts of lots?

The deed from Symmes to Harmer calls most clearly for entire lots. It was not usual, (as far as my information extends,) at that period to deed fractions of lots.

Question. Have you knowledge of Judge Symmes ever having disposed of, or sold, the half block of lots west of Ruffin's corner to any person except Ethan Stone?

I have no knowlege of the fact of Judge Symmes selling the half block referred to in the question. I have always understood that Ethan Stone received his title through the sheriff, who sold the property under an execution.

Question. Is it now, or ever has it been your understanding, that Judge Symmes laid out more than one block or square of lots west of Ruffin's corner?

I have never understood that Judge Symmes laid out more than one block of lots, that is, one tier of blocks, below Major Ruffin's.

Question by defendants. Did not Ethan Stone buy at sheriff sale all Judge Jno. C. Symmes' interest in the fraction on the Ohio river, and east of Broadway?

I have always understood that he did.

By the same. Before Judge Symmes had become, by such sale, divested of all his interest in the fraction, did you ever hear him designate Harmer's lots a lying within the Garrison reservation?

I was not acquainted with Judge Symmes until after the sale was made to Stone.

By the same. Do you know whether Judge Symmes' deed to Harmer was a general warrantee deed? and whether it thereby became his interest to locate them without the boundaries of the Garrison reservation as much as practicable.

The deed from Symmes to Harmer for the lots is a matter of record; it is now before me; it contains the usual covenants of general warranty and seized, with regard to his interest as to the location of the lots. I can only say that I should naturally draw the conclusion that, should Harmer loose the lots, his recourse would be to Symmes for indemnification.

By the same. Prior to the laying out the Garrison reservation, was the land between Ruffin's corner and what was then eastern *one*, in one entire piece as respected streets? or, in other words, was Eastern row, (now Broadway,) the first street west of Lawrence street?

The space between Lawrence street and Eastern row had not any streets appearingly on the surface prior to the laying out the Garrison reservation in 1807.

By the same. Did not Judge Symmes consider the land within the garrison reservation as his property, and did he not sell lots within to Strong and others?

Judge Symmes always did consider it very hard on the part of Congress that they should retain the fee of the fifteen acres reserved for the use of the

garrison. He always stated that the 15 acres, as *as* laid out by me, did interfere, in some degree, with his plan of lots as laid out by him. I have no knowledge of his having sold lots to Strong.

By the same. Are the numbers on the plat referred to by you, and mark-W. X., that is, the No. 1 of the lots, the writing of John C. Symmes?

I should answer that the figures determining the numbers of the lots are not in the hand-writing of Judge Symmes.

By the same. Did you ever see said plat before 1811?

I have no recollection that I did.

Question by plaintiff. Is the hand-writing upon the map of Judge Symmes, before referred to, as written upon lots No. 1, 2, 24, 23, 46, 27, &c., in the hand-writing of John Cleves Symmes? have you seen him write? and are you acquainted with his hand-writing?

Answer. The hand-writing on the lots upon the map of Judge Symmes, is in his proper hand-writing. I have seen him write very often, and am well acquainted with his hand-writing.

THOMAS HENDERSON.

Yeatman's deposition.

Same time and place, came Griffin Yeatman, who first being carefully examined, cautioned, and sworn to testify the whole truth, does depose and say:

Question. Who was the reputed owner of the lots or half blocks directly west of Ruffin's corner, situate on Front and Lawrence streets, in the year 1790, or about that time?

I came to Cincinnati about the year 1793, and in that year I understood that General Josiah Harmer was the owner of lots lying west of what is called Ruffin's corner.

Question by same. Did you understand that General Harmer's lots lay immediately west and near to Ruffin's corner, or did they belong to some one else? and if to any other person, to whom did they belong?

There was a cellar dug on the lots west of Ruffin's corner, called St. Clair's cellar, but never heard of any one owning lots there but General Harmer. The cellar, as laid down upon the map of Mr. Guest, which is now before me, and agreeable to my impression, it is correct, or nearly so, as to its east and west position.

GRIFFIN YEATMAN.

THE STATE OF OHIO, *Hamilton county, ss.*

I, Enos Woodruff, one of the associate judges of the court of common pleas of said county, do hereby certify that the foregoing depositions of Jacob White and John Riddle, which they have subscribed, were taken before me, at the office of Caswell and Starr, in Cincinnati, on the first day of May, 1829, and reduced to writing by myself in the presence of deponents. And the deposition of Thomas Henderson and Griffin Yeatman, was reduced to writing, and subscribed by the deponents respectively, at the same time and place, after being carefully examined, cautioned, and sworn to testify the whole truth in the foregoing entitle cause. I further certify, that I am not attorney or counsel for either of the parties, nor interested in the event of the suit. In testimony whereof, I have hereunto subscribed my name, and affixed my private seal, this first day of May, A. D. 1829.

ENOS WOODRUFF, [SEAL.]

Associate Judge of the court of common pleas of Hamilton county.

The plaintiffs then called to the stand as a witness, Thomas Henderson, ho testified that he came to Cincinnati in the year 1806. That, in the ear following, he assisted in surveying and laying off the Garrison reserva- on of fifteen acres, reserved by Congress in the grant to John C. Symmes, id including the site of fort Washington; and that the boundaries of the id fifteen acs. as so laid off, are included in the plat and survey in the lines mbered 1, 2, 3, 3, 4, and 4, 1.

Survey of Government reservation.

TREASURY DEPARTMENT,

GENERAL LAND OFFICE, 17*th February*, 1829.

I certify that the within is a true copy of the original plan of the United tes' land in Cincinnati, with all the marks, figures, and notes designated reon, on file in this office, and which is certified in the hand-writing of ed Mansfield, formerly surveyor general.

In testimony whereof, I, George Graham, Commissioner of the General nd Office, have hereunto set my hand, and caused to be affixed the seal said office, at the date above stated.

GEO. GRAHAM, *Commissioner.* [SEAL.]

I do hereby certify that, agreeable to the instructions from the Secretary of the Treasury, I have surveyed, or caused to be surveyed, and laid off nto lots, streets, and alleys, the fifteen acres of the land of the United States, lying in the town of Cincinnati, in the form and manner exhibited on this plat, and that the field notes of the surveys are deposited in the of- ice of this department.

Certified this 12th day of July, 1807.

JARED MANSFIELD, *Surveyor General.*

And they also proved by the said Henderson, that said survey was made by order of the Government of the United States, in the presence of Jared Mansfield, the Surveyor General of the United States, and all the old citi- zens of the town of Cincinnati; that said survey was adjourned and continu- ed, from day to day, for the purpose of enabling them to ascertain with certainty the original boundaries of said reservation, as the stakes were originally set. He further stated, that all the lots surveyed by John C. Symmes lay east and above the said reservation, except so far as they ap- pear to be cut off, as laid down on the map made by him, and also by Mr. Guest: and that Ludlow street was at that time laid out by him, and that he gave it its name. And, further, that Symmes never laid out but one block of lots between the garrison reservation and Ruffin's corner, fronting upon the street next the river. He further stated, that for several years he had been the surveyor of the city of Cincinnati, street commissioner of the said city, and recorder of the county; and, while acting in those several capaci- ties, he had great opportunity of knowing the situation and boundaries of lots. He further stated, that Ruffin's corner, as marked on the plat of Mr. Guest, made by order of the court, was a well known and established corn- er; that himself and other surveyors had adopted it as a standard corner in all their surveys in that part of the town; and that he had heard a number of the old citizens of Cincinnati, now dead, speak of the situation of the lots sold by Symmes to Harmer, and named particularly Joel Williams, one of the old proprietors of the other part of the town, and David Zeigler, who,

he said, was the reputed agent of General Harmer; and, in the conversation spoken of, warmly censured one Ethan Stone for attempting to take from Harmer his property.

The defendants objected to the admission of said Zeigler's declaration as to the location of said lots; which objection was overruled by the court, and the statement of said Zeigler, as testified to by said witness, admitted in evidence to the jury; to which opinion of the court, in admitting said evidence, the said defendants except, and pray that their exceptions be sealed.

The said Henderson further states, that, when he came to Cincinnati in 1806, Ethan Stone was in possession of the block in which the land in controversy lies, claiming under a sheriff's sale, made in 1803, on a judgment against John C. Symmes. That the witness, in eighteen hundred and eight and nine, surveyed the said block, with the residue of the lots laid down on said plat, by order of the city of Cincinnati, but that the said Ethan Stone did not recognize his acts, but employed one Cutler to make a survey on his behalf.

The plaintiffs then offered to read from Drake's picture of Cincinnati, the date of the surveying and laying out lots in that part of Cincinnati which lies east of the Garrison reservation; the defendants objected to the admission of this book in evidence, the author being, as was agreed, alive, and his deposition, as to other matters, taken in this cause; this objection was overruled by the court, and the evidence admitted to go to the jury; to which opinion of the court the defendants except, and pray their bill may be sealed.

The defendants subsequently offered in evidence a map contained in the same book, it being a plan of the town of Cincinnati, exhibiting the same plan of the town as that offered by the plaintiffs, except that the four first lots were not numbered. The plaintiffs then produced the plat marked No. 3, and again called upon the said Thomas Henderson, who testified that he saw the said plat for the first time in 1809, while the depositions in perpetuance used in this cause were being taken: that the sd. plat was shewn to him by John C. Symmes, in the presence of Daniel Symmes: that the writing thereon and the lines, but not the numbers, were then put upon it in the hand-writing of John Cleves Symmes: that, in eighteen hundred and eleven, the said plat was again shewn to him, at which time the figures numbering the lots were upon it, and he recognized those figures as being in the hand-writing Daniel Symmes: that he then, at the request of the proprietors, and several of the old citizens of the town, copied said plat, protracting it on a larger scale, and placed his copy on the records of the county, and that the same has since governed him and all other surveyors as far as he has known, in surveys made in that part of the town, now city of Cincinnati: this plan was recorded for the purpose of preserving the original plan of that part of the town which was laid out by Judge Symmes, and that the inhabitants of Cincinnati have since recognized it as the true plan of the said part of town, except Ethan Stone, then in possession of the block, in which the land in controversy is situated, who denied its correctness. And, he further stated, that this was the only plan of that part of the city known and recognized by the citizens of Cincinnati; that the size and numbers of the lots, and also the width of the streets and alleys, were determined with reference to that plan, and that all the surveyors of the lots, streets, and alleys in that part of the city, were made with reference to that plat, so far as he knows; and that he never knew of any other plan,

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and no other was ever adopted as the plan of the upper part of the town. The street next below Ruffin's corner was sixty feet wide.

The plaintiffs thereupon offered the said plat in evidence to the jury, for the purpose of shewing the original plan of that part of the city; to the admission of which evidence the defendants objected, which was overruled by the court, and the paper admitted in evidence: but the court instructed the jury to disregard any thing on the said map written by the said John Cleves Symmes. To the opinion of the court, in admitting this evidence, the defendants except, and pray that their exceptions be sealed.

The plaintiffs then proved by Jacob White that he came to Cincinnati in the year 1789: that, in 1790, he became acquainted with Ruffin's corner, which was a known and acknowledged corner: that there was but one block of lots between Ruffin's corner and the garrison, fronting the river: that immediately below the block, was the artificers' shops; this block lay upon what is called Front street. He always understood that this block of lots belonged to Governor St. Clair and *and* General Harmer; and that Governor St. Clair owned the two lots next below Ruffin's corner, fronting on the street, and that Harmer's lots lay next.

The defendants then gave in evidence the record of a suit in chancery, prosecuted by General Josiah Harmer vs. Ethan Stone, in the supreme court for Hamilton county, until the same was abated by the death of the complainant, and the bill of revivor, and proceedings thereon, by the lessors of the plaintiff, by their next friend; which proceedings in the original suit and on the revivor, are as follows:

Record of Hamilton co.

Pleas at Cincinnati, in the county of Hamilton, and State of Ohio, before the honorable Calvin Pease and Jessup N. Couch, esquires, judges of the supreme court of the State of Ohio, on the 9th day of June, Anno Domini one thousand eight hundred and twenty.

The HEIRS of Josiah Harmer, deceased,
vs.
ETHAN STONE. } *In chancery.*

Be it remembered, that, on the twentieth day of August, A. D. 1811, Josiah Harmer, by Monroe, his attorney, filed his certain bill on the chancery side of the said supreme court of the State of Ohio, closed in the following words and figures, to wit:

To the honorable the judges of the supreme court of the State of Ohio, in chancery sitting, in and for the county of Hamilton:

Humbly complaining, sheweth unto your honors, your orator, Josiah Harmer, late a brigadier gen'l in the U. States' army, that some time in the year 1790 or 1791, your orator purchased from a certain John Cleves Symmes eight lots of land, situate, lying, and being in the town of Cincinnati, in the territory northwest of the river Ohio, but now in the State of Ohio, as by the within contract of the said Symmes, duly sealed and delivered unto your orator, will more at large appear; which is hereto annexed and made a part of this bill, and marked A. That, at the time of the execution of the above mentioned contract, the said John C. Symmes had not obtained a grant from the United States of America for any part of

the lands which he had contracted to purchase from the U. States; but, by his said contract with them he was authorized to settle and sell a certain quantity in and by the said contract between the said Symmes and the U. States, is more at large set forth; a true copy thereof, so soon as can be obtained, your orator will file as an exhibit in this suit. That, in pursuance of the aforesaid contract between your orator and the said Symmes, your orator was put in possession of the aforesaid eight lots of ground, and did, in the year 1790 or 1791, occupy, and improve, and enclose the same, and continued to occupy the same so long as your orator remained at the station of fort Washington; and your orator, when he was ordered on other duty by the Government, he permitted the several commandants of the garrison at fort Washington to use and cultivate the said lots as a convenience, and with the view to preserve the possession of your orator. Your orator doth further charge, that he paid the said John C. Symmes the full amount of the price of the aforesaid eight lots of ground, before he received from the said Symmes the within contract aforesaid, "to wit," the sum of £32 0 0, Pennsylvania currency, equal to the sum of eighty-five dollars and thirty-three cents, which sum your orator paid unto the said Symmes in the year 1790, or thereabouts. That the aforesaid lots of ground lie within the limits of the grant which the said Symmes did obtain from the United States in the year 1794, as your orator has been informed. That the aforesaid eight lots remained in the possession of your orator, and was attended as the property of your orator by his several friends, Abijah Hunt, esq., Col. John Armstrong, Col. Cornelius R. Oldam, and Jesse Hunt, esquire, and was always considered, called, and believed by all and every person who resided in the town of Cincinnati, and who had inquired on the subject, to be the property of your orator; nor was it ever known that, nor did in fact the said John C. Symmes ever claim, use, occupy, or possess the aforesaid eight lots, or any part of them, from after the date of the aforesaid within contract, between your orator and said Symmes; but so far from said Symmes having ever claimed the said property, that the right and possession, and occupancy of your orator was so notorious, that all the old livers in the town of Cincinnati could have declared it to any inquirer. Nor was your orator's title and right to the lots aforesaid ever questioned, until a certain Lawrence obtained a judgment against the said John C. Symmes in one of the courts of the then territory aforesaid, now State of Ohio, for a considerable sum of money, when the circumstances of the said Symmes had become embarrassed, and all the property of the said Symmes, which he had not contracted to sell, or had sold personally to fair purchasers, had been sold by the officers at prices, and under circumstances, which were well calculated to swallow up the largest fortune in the payment of a moderate sum of money. Then it was that the inquiry was made into the contracts which the said Symmes made with fair and honest purchasers and settlers, and if no deed of conveyance had been recorded, the property was sold by the officer to the ruin of the honest but ignorant purchaser who had paid for his farm thus fraudulently sold; such was the situation of your orator's property aforesaid. The contract aforesaid between the said Symmes and your orator, purported to be a deed of conveyance, but as the said Symmes had not himself a legal title to the lots at the date of the contract, he could not convey a legal title to your orator; your orator then received the instrument as evidence of the contract and the terms of the bargain: your orator therefore believed it unnecessary to record the same. That

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when the said Symmes did obtain his grant from the Government, your orator was absent on duty from this country; and the two gentlemen who witnessed the same were officers in the army, and also absent from this part of the country, and on duty. But, if your orator had been ever so desirious to have had that contract recorded as a deed of conveyance, it was out of his power for many years after its date, because there existed no law appointing a recorder, nor was the manner of proving such deeds of conveyance pointed out by law. And when the several laws were thereafter enacted, your orator was a resident in another State, and not apprized thereof; but when your orator became informed of the proper manner of proceeding, and also of the sale under the aforesaid execution, he then, by his agent, procured an acknowledgment of the aforesaid instrument of writing by the said Symmes, and had it recorded in due time after such acknowledgment. Your orator doth further charge, that James Smith, the sheriff, who levied the execution, the attorney who obtained the judgment for Lamma, and Ethan Stone, the purchase under that levy, did hear of, and were informed of your orator's claim; and, that Ethan Stone, if he did not know of your orator's right at the moment he purchased, that he did know or hear of the same before he paid for the property, and before he had obtained his deed of conveyance. Your orator doth further charge, that the aforesaid property was valued by the persons whom the sheriff had summoned for that purpose, at a value for less than the real intrinsic value, or the price it would have really sold for on a fair sale, in consequence of the doubtfulness of the title; thus affording an opportunity to speculators to embarrass the title of innocent persons, and making the chance of gain in the law suit equal to the risk of the small sum paid. Your orator doth further shew unto your honors, that, by virtue of an execution, founded on a judgment which the said Lamma had obtained against the said Symmes, amongst other property, the said James Smith, sheriff of Hamilton county, seized the aforesaid eight lots of ground into his possession as the property of the said Symmes, on the day of in the year , and did proceed to make sale thereof on the day of , in the year , at which sale the said Ethan Stone became the purchaser at the price of , to whom the said sheriff executed a deed of conveyance for the property so as aforesaid sold on the 16th day of March, 1803, which deed was not recorded until the 5th day of October, 1803. Your orator will here remark, that the deed by which the said Stone holds the aforesaid lots, was not recorded within the time prescribed by law from the date of the deed; and if the acknowledgment of the deed by the sheriff is to cure that defect, your orator humbly hopes the acknowledgment of John C. Symmes of his deed to your orator, before Mathew Nimmo, and the speedy recording of his deed, will have the same effect to secure his title. But now, so it is, may it please your honors, that the said Ethan Stone, combining with the said James Smith, (both of whom your orator prays may be made defendants to this bill,) and also combining with divers others to your orator unknown, &c., to injure and oppress your orator, set up a title to the aforesaid lots, paramount to the title of your orator, stating that he holds the said lots under the title of the said John C. Symmes, they were legally seized into the possession of the aforesaid sheriff as said Symmes' property, and bought at a fair price at the sale made by the said sheriff; that he, said Stone, holds the sheriff's deed for the same, which was recorded prior to your orator's deed; and that your orator, failing to record his deed in due time, has lost

his priority of claim; and, that he, said Stone, is a bona fide purchaser without notice, and cannot be affected by your orator's equitable title. When your orator doth charge that, at the time of the rendition of the judgment aforesaid against the said Symmes, and for a long time before, and ever since, (until the aforesaid sale by the sheriff,) the right and possession of the said lots were in your by a fair purchase, at the full price of the lots at the time when your orator made the purchase, and that the said Symmes never did claim, or pretend to claim, right, title, or possession in the said *lotts*, from the date of his contract with your orator. That the judgment aforesaid against said Symmes could only bind the property of Symmes, and no other person; that this was the property of your orator, and not liable to satisfy Symmes' debts. That the said Stone, and also the said sheriff, well knew that all the property levied on by the said sheriff under the execution, and so as aforesaid sold and bought by said Stone, did not belong to said Symmes at the time of the levy, but was sold at the risk, and purchased at a price very far below its value, without designating which was Symmes' property, and which had been sold by him, or reserved by the Government of the U. States, so that the whole property, and incumbered with dispute, did not produce a sum near the value of that which the said Symmes really owned, and the purchaser would have a good bargain at all events. That the deed of conveyance made by the sheriff could only convey the said Symmes' right, which right the said Symmes had long before said judgment sold to your orator, and delivered him the property, and received full payment therefor. That, when your orator purchased from Symmes, he, Symmes, had no grant from the U. States for his lands, but only an equity under his contract with them; that consequently he could not convey a legal title to your orator, but only his equity; that such was the effect of this instrument of writing aforesaid, executed and delivered by the said Symmes unto your orator, and which never was required by law to be recorded more than any other written contract of bargain. That, before that writing could operate as a deed conveying an indefeasible legal title, the said Symmes must himself be vested with a complete legal title, and must also re acknowledge and deliver the same. That, until Symmes obtained a legal title himself, the said writing would serve as a covenant on the part of Symmes to fulfil his part of the contract, and when the Government conveyed to him, he, Symmes, would then be considered as a trustee of the legal title in those lots for the benefit of your orator. That, although the said Stone's deed was first recorded, yet it was not recorded in time from its date; and that your orator's deed was recorded in due time from the date of the re-acknowledgment, which alone could give it effect as a regular deed of conveyance. That the said sheriff and the said Stone were informed of your orator's claim at the time of the sale, before the purchase money was paid, and before the acknowledgment of the deed made by the sheriff to the said Stone.

In tender consideration whereof, and for as much as, &c., to the end therefore that the said Ethan Stone and James Smith may, upon their several corporal oaths, true, full, and perfect answer make to all and singular the premises, as distinctly and completely as if again repeated in the form of interrogatories; and the said Ethan Stone may be compelled, by good and sufficient deed of conveyance, with special warranty against himself, his heirs, assigns, and all claiming by, through, or under him, convey his right, title, and interest, in and to the aforesaid eight lots of ground unto

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your orator in complete fee simple, and that your orator may have such other and further relief in the premises as to this honorable court shall seem mete: may it please your honors to grant your orator a writ of subpœna agreeable to the statute in such case made and provided; and your orator, as in duty bound, will ever pray, &c.

MONROE, *P. Q.*

(*Deed from John C. Symmes, above referred to.*)

To all persons who may see these presents: Know ye, that I, John Cleves Symmes, of the county of Hamilton, and territory northwest of the river Ohio, proprietor of the county lying between the Great and the Little Miami rivers, for the consideration of thirty-two pounds currency, at seven shillings and six pence the dollar, to me in hand well and truly paid at and before the ensealing and delivery hereof, by Josiah Harmer, esquire, brigadier general in the army of the United States, and commandant in fort Washington, have granted, bargained, and sold, aliened, enfeoffed, and confirmed, and by these presents do grant, bargain, and sell, alien, enfeoff, and confirm, unto the said Josiah Harmer, and to his heirs and assigns for ever, eight lots of land in the town of Cincinnati, in the county of Hamilton, in the Miami purchase, each lot containing sixty square rods of ground. The first four of the said eight lots are butted and bounded as followeth, viz: on the south side on the front or river street in the said town, lying directly in front of fort Washington, being twelve rods wide on the said street, including two lots, and extending northwardly from the said front street twenty rods, to the south side of the second street from the Ohio, adjoining the said second street twelve rods, from east to west, and on the east bounded by the land of his excellency Governor St. Clair. The other four lots, being part of the eight lots aforesaid, are butted and bounded as followeth, southerly by the north side of the said second street, twelve rods wide on the said street, including two lots on the east, by the first street running northerly from the Ohio, on the east side of fort Washington, adjoining said street twenty rods, from north to south; on the north by the south side of the third street from the Ohio river, adjoining the said third street twelve rods, from east to west; the said four lots inclusively being an oblong square of twelve rods wide and twenty rods long, from street to street, lying eastwardly from fort Washington, together with all and singular the privileges and appurtenances to the aforesaid eight lots belonging, or in any manner or way appertaining: to have and to hold the said eight lots of land unto the said Josiah Harmer, to the only proper use, benefit, and behoof of the said Josiah Harmer, and to his heirs and assigns for ever. And I, the said John Cleves Symmes, for myself and my heirs, do hereby covenant with the said Josiah Harmer, and with his heirs and assigns, that from the day of the date hereof, and at all times for ever hereafter, I, the said John Cleves Symmes, will indemnify and save harmless the said Josiah Harmer, his heirs and assigns, in the quiet possession and enjoyment of the above granted eight lots, against the lawful claims and demands of me, the said John Cleves Symmes, my heirs and assigns, and against the lawful claims and demands of all and every other person or persons whatsoever claiming the same, and all and every part of the said eight lots, with all and singular the privileges and appurtenances thereunto belonging, unto the said Josiah Harmer, and his heirs and assigns, will warrant, and by these presents for ever defend. In witness whereof, I, the said John Cleves Symmes, have here-

unto set my hand, and affixed my seal, the sixth day of May, in the year of our Lord one thousand seven hundred and ninety-one.

JOHN C. SYMMES. [SEAL.]

Sealed and delivered in the presence of
D. STRONG, BARTHOLOMEW THAUMBURGH.

THE STATE OF OHIO, *Hamilton County, ss.*

Personally appeared before the subscriber, one of the associate judges in and for the county of Hamilton, the within named John Cleves Symmes, grantor of the within deed, who acknowledged the same to be his own voluntary act, for the uses and purposes therein contained.

In testimony whereof, I have hereunto set my hand and seal, at Cincinnati, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and four.

MATTHEW NIMMO. [SEAL.]

And, afterwards, to wit, on the twenty-eighth day of July, Anno Domini one thousand eight hundred and twelve, comes Ethan Stone, one of the defendants, by Jacob Burnet, his attorney, and files his plea to the aforesaid bill, in these words: The plea of Ethan Stone, one of the defendants to the bill of complaint of Josiah Harmer, complainant.

The end of the complainant's bill is, to compel this defendant to convey to the complainant, in fee simple, the several lots of land described in the bill of complaint, by deed, with covenants of warranty against himself and all persons claiming under him. This defendant, by protestation, not confessing or acknowledging all, or any, of the matters and things in the said bill to be true, in such manner and form as the same are therein charged and set forth, for plea unto the said bill, saith, that John C. Symmes obtained his patent from the United States, including the premises in question, on the day of September, seventeen hundred and ninety-four, at the city of Philadelphia, and continued in the said city and neighborhood more than eight months after he had obtained his said patent; during the whole of which time the complainant was residing with his family in or near the said city of Philadelphia, and well knew the fact that the said Symmes had obtained such a patent. And the defendant further saith, that one Nathan Lamma obtained a judgment before the judges of the general court, of the northwestern territory, in the term of March, eghteen hundred, against John C. Symmes, on which judgment a writ of execution was sued out, directed to the sheriff of the county of Hamilton, by virtue of which execution, the said sheriff levied, among other things, on the premises described in the said bill; and, having had the same valued and advertised as was directed by the statute in such case made and provided, proceeded to sell, and did sell the same premises, by virtue of said execution, for and in satisfaction of the aforesaid judgment; the said John C. Symmes being then, and for a long time before, seized of fee of the same premises; and the defendant, being present, did then and there bid for the same the sum of thirteen hundred and twenty dollars; and no person bidding more, the said premises, including the lots claimed by the complainants, and described in his bill of complaint, were openly cried off, and struck down to this defendant. Whereupon this defendant paid the purchase money abovementioned, and on, or about the sixteenth day of March, Anno Domini

eighteen hundred and three, received a deed from the said sheriff for the premises in question, which deed, by the statute then in force, could not be perfected until the same was acknowledged by the sheriff who executed it, in open court; and this defendant avers, that, from the time of executing the said deed until the month of September next following, there was no court sitting before whom the said deed could be perfected; at which time, to wit, in the term of September, eighteen hundred and three, James Smith, esq., the then sheriff of the county of Hamilton, appeared in open court, and acknowledged the said deed in due form of law; and this defendant, on the fifth day of October following, caused the said deed to be recorded; and this defendant avers, that, at the time he purchased the said premises, and paid the consideration money, and, at the time he received his title thereto, he had no notice whatever of the claim of the complainant, or of any other claim whatever; and, therefore, this defendant is an innocent purchaser, for valuable consideration, without notice of the complainant's claim. All which matters and things, this defendant doth aver and plead in bar of the complainant's said bill, and of the claim therein set forth concerning which the complainant prays relief. And this defendant prays to be hence dismissed, with his reasonable cost, in this behalf wrongfully sustained.

JACOB BURNET, *Attorney.*

THE STATE OF OHIO, *Hamilton County, ss.*

Came personally before me, the subscriber, one *one* of the justices of the peace within and for said county, Ethan Stone, and made oath that above plea, and the facts therein stated, so far as they come within his knowledge, are true; and, so far as they *they* depend upon other evidence, he believes them to be true.

GRIFFIN YEATMAN.

And, on motion, cause is, until the next term, to wit, the term of September, one thousand eight hundred and twelve, continued; on which day, to wit, on the twenty-first day of September, Anno Domini eighteen hundred and twelve, comes, as well the said complainant, by his attorney aforesaid, as the said defendants, by their attorney aforesaid; and, on motion, the said complainant is ruled to reply to the aforesaid plea in six months; and thereupon cause is, until the next term, to wit, the term of May, eighteen hundred and thirteen, continued; on which day, to wit, the seventeenth day of May, eighteen hundred and thirteen, come, as well the said defendants, by their attorney, as the said complainant, by his attorney; and the said complainant replies not to the plea aforesaid as ruled to do, but therein wholly fails, and makes default; and, on motion, cause is, until the next term, to wit, the 28th day of May, 1814, continued.

At which term, to wit, the term of May, Anno Domini eighteen hundred and fourteen, comes the said defendants, by their attorney; and the death of Josiah Harmer, the complainant, in the above bill, being suggested, thereupon, on motion, cause is, until the next term, to wit, the 25th day of May, eighteen hundred and fifteen, continued. And now, here, at this term, to wit, the term of May, one thousand eight hundred and fifteen, comes the said defendants, by their attorney aforesaid, and D. K. Este, esquire, files a bill of revivor, in the words following, that is to say—"To the honorable the judges of the supreme court of the State of Ohio, in chancery sitting,

in and for the county of Hamilton, humbly complaining, showeth unto your honors, your orators, Sarah Harmer, widow of Josiah Harmer, deceased, late of Philadelphia, Eliza Harmer, of full age, and Josiah Harmer and William Harmer, minors, who prosecute, by Sarah Harmer, their next friend, of the county of Philadelphia, in the State of Pennsylvania, children and heirs of Josiah Harmer, deceased, that, on or about the twentieth of August, eighteen hundred and eleven, Josiah Harmer, deceased, filed his bill in the superior court of this State, *of* in the county aforesaid, setting forth the claims of the said Josiah, deceased, to certain lots of ground situate in the town of Cincinnati, which lots are claimed by Ethan Stone, by virtue of a purchase from James Smith, then sheriff of the county aforesaid, as sheriff, &c. &c., from the matters in the said bill therein set forth, praying that the said Ethan Stone may be compelled, by good and sufficient deed of conveyance, with special warrantee to convey his right, &c. to the said lots of ground to the said Josiah, in fee simple; and, whereupon, a subpœna was issued, and returned served on the said James and Ethan, defendants to the said bill, at the term of August, in the year aforesaid; to which bill the said Ethan Stone, one of the said defendants, filed his plea, as by the said bill, subpœna plea, and other proceedings had in the same cause, and now remaining, as of record, in this honorable court, may more fully appear, and to which your orators beg leave to refer. But, before any other proceedings were had in the said cause, the said Josiah died, and left your orators, Sarah Harmer, and his children and heirs, as aforesaid; whereby the said suit and proceedings became abated. To the end, therefore, that the said bill, plea, &c., so abated as aforesaid, may stand revived as aforesaid, against the said defendants, and be in the same plight, state, and condition, as the same were in at the time of the abatement thereof; may it please your honors to grant to your orators their writ of subpœna revivendum to be directed to the said defendants, thereby commanding them, respectively, to appear and show cause, &c., why the proceedings, &c., should not be revived, &c.; may it please your honors to grant your orators to be further relieved in the premises, &c.

D. K. ESTE, *for complainant.*

And afterwards, to wit, on the seventh day of March, A. D. eighteen hundred and sixteen, a subpœna ad revivendum issued in pursuance of the said bill, returnable to May term, Anno Domini 1816, directed to Daniel Hasbrooks, sheriff of Hamilton county, commanding him to summon the said Ethan Stone and James Smith to show cause, and say if any thing they have or can say, why the proceedings, &c. should not be revived, and stand in full force, &c.; upon which subpœna the said sheriff, on the seventeenth day of May, 1816, returned, served by copy on Ethan Stone, non est as to James.

And afterwards, to wit, on the 19th day of April, A. D. 1816, came the said Sarah Harmer, widow of Josiah Harmer, deceased, Eliza Harmer, of full age, Josiah Harmer and William Harmer, minors, by their next friend, Sarah Harmer, by their attorney, and file their replication to the plea aforesaid, in these words, to wit: these repliants saving and reserving to themselves all and all manner of benefit of exception to the manifold insufficiencies of the said plea, for replication thereunto, say, that they will aver, and prove their said bill to be true, certain, and sufficient in law to be answered unto; and that the said plea of the defendants is uncertain, untrue, and in-

sufficient to be replied unto by these repliants; without that, that any other matter or thing whatsoever in the said plea contained, material or effectual in the law, to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things, these repliants are, and will be ready to aver, and prove, as this honorable court shall direct; and humbly prays, as in his said bill they have already prayed.

D. K. ESTE, *Sol'r for compl.*

And now, here, to wit, at the term of May, A. D. one thousand eight hundred and sixteen, came the said parties, by their attornies, and, thereupon, cause is, until the next term, to wit, the 31st day of May, Anno Domini one thousand eight hundred and seventeen, continued; on which day, to wit, the term of May, 1817, aforesaid, before the judges of the supreme court of the State of Ohio, came the parties aforesaid, by their attornies aforesaid, and, on motion, cause is, until the next term, to wit, the term of June, eighteen hundred and eighteen, continued; at which term, to wit, the term of June, A. D. one thousand eight hundred and eighteen, before the judges of the supreme court aforesaid, came the parties aforesaid by their attornies, and, by consent of parties, *and by consent of parties*, by their attornies, the name of James Smith, one of the defendants, is ordered to be stricken out of said bill; and, on motion, cause is, until the next term, to wit, the term of May, eighteen hundred and nineteen, continued; at which term, to wit, the term of May, one thousand eight hundred and nineteen, before the said supreme court of the State of Ohio, came the parties aforesaid, by their attornies aforesaid, and, because the court are not advised whether the defendant had notice of Harmer's claim before he paid the consideration money, direct the said issue to be tried at the next term, and thereupon cause, until the next term, to wit, the term of June, one thousand eight hundred and twenty, continued; on which day, to wit, the 9th day of June, A. D. 1828, before the honorable Calvin Pease and Jessup N. Cauch, esquires, judges of the supreme court of the State of Ohio, came the parties aforesaid, by their attornies aforesaid, and the sheriff of Hamilton county, to wit, Richard Ayres, esquire, in pursuance of the order of court, and agreeably to the statute in such case made and provided, brings here, before the court, twelve good and lawful men, of the county aforesaid, of whom, &c., to recognize, &c., because as well, &c., viz. John Baldwin, William Armstrong, Abenezer Miater, Daniel Brooks, Absalom Foster, Samuel Newell, Joseph Thornton, Theodore B. Barrutt, William Schillinger, James Phillips, James Ward, and James L. Chamberlain, who, being duly elected, tried, and sworn well and truly to try the issue, whether Ethan Stone had notice of Harmer's claim to the property in question, before he paid the consideration money, who, after having the proofs adduced by the parties, upon their oaths, do say—"We, the jury, find the defendant, Ethan Stone, had notice of the said Josiah Harmer, deceased, claim to the lands in question, previous to paying the purchase money therefor."

And, motion being made for new trial of the issue, &c., and argued, and the court, upon full and deliberate consideration, overruled the motion; and now, here, to wit, on the day and year aforesaid, the said court decree in the words following, to wit: in the above cause, the bill, &c., and the depositions, &c., being regularly filed, and the fact found by a jury recorded, the court, after having fully heard, read, and examined the same, and, after duly considering all the allegations and proofs of the parties, do order, ad-

judge, and decree, and, it is hereby ordered, and adjudged, and decreed, that Ethan Stone, the defendant in the above cause, having the legal title to the premises in the complainant's bill set forth, to which premises it sufficiently appears to the court, that the complainants have the equitable title, and that said Stone had notice of the same, before he paid the purchase money for the land by him purchased, as in his plea set forth; that he, the said Ethan, do legally execute, and deliver to the complainants, or to their agent, Jesse Hunt, for their use, in three months from this date, a deed of release of all his right, title, interest, claim, and demand whatsoever that he has to the lots described in the bill of complaint, and in the deed from John Cleves Symmes to said Josiah Harmer, bearing date the sixth day of May, seventeen hundred and ninety-one, for eight lots of land in the town of Cincinnati, in the county of Hamilton, in the Miami purchase, each lot containing sixty square rods; the first four of the said lots bounded on the south side, on the Front or river street, in the said town, lying directly in front of fort Washington, being twelve rods wide on the said street, including two lots, and extending northerly from the said Front street twenty rods to the south side of the second street from the Ohio, and adjoining the said second street twelve rods from east to west; and, on the east, bounded by lands of Governor St. Clair. The other four lots, part of the eight lots aforesaid, are bounded southerly by the north side of said second street, twelve rods wide on said street, including two lots on the east by the first street, running northerly from the Ohio on the east side of fort Washington, adjoining said street, twenty rods from north to south on the north, by the south side of the third street from the Ohio river, adjoining the said third street twelve rods from east to west; the said four, inclusively, being an oblong square of twelve rods wide, and twenty rods long from street to street, and lying eastwardly from fort Washington. And that the said Ethan Stone yield up to the complainants, or their agent as aforesaid, the peaceable possession of the said premises at the time of the delivery of the said deed of release; and that he, the said Ethan Stone pay the costs of this said suit. By order of the court.

CALVIN PEASE, *Chief Judge.*

Which said costs and charges amount to the sum of fourty-four dollars and eighty-three cents. Costs, $44 83.

THE STATE OF OHIO, *Hamilton county, sct.*

I, Daniel Gano, clerk of the supreme court of the State of Ohio, within and for said county, do hereby certify the foregoing to be a true transcript of the record of proceedings had in said court, in the cause wherein the heirs of Josiah Harmer, decased, are complainants, and Ethan Stone defendant.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said supreme court, at Cincinnati, this 8th day of July, A. D. 1829.

DAN'L GANO, *Cl'k.* [L. S.]

The defendants then gave, in evidence, the deposition of Joseph Guest, Ethan Stone, Septimus Hogan, David K. Este, and Jonathan Whetston; and also the deposition of Dan'l Drake, which are as follows:

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Notice of E. Stone's deposition.

HARMER'S HEIRS, *vs.* GWYNNE & MORRIS. } *Ejectment in the circuit court of the United States, seventh circuit, and dist. of Ohio.*

The plaintiffs in this cause, and their attorney, will please take notice, that we shall proceed to take the depositions of Ethan Stone, and others, on Tuesday, the seventh day of July, instant, at the office of Messrs. Hammond and Gerrard, on Main street, Cincinnati, between the hours of eight o'clock in the morning, and seven o'clock in the evening of said day, to be read as evidence in the *in the* above entitled cause, at which time and place you can attend.

GWYNNE & MORRIS,
By HAMMOND & GARRARD.

Cincinnati, July 3d, 1829.

We acknowledge service of this notice, July 3d, 1829.

CASWELL & STARR,
Attorney for plaintiff.

Guest's deposition.

STATE OF OHIO, *Hamilton county, ss.*

LESSEE of Harmer's heirs, *vs.* GWYNNE & MORRIS. } *Ejectment in the circuit court of the United States, for the district of Ohio.*

Be it remembered, that, on the seventh day of July, 1829, at the office of Charles Hammond, esquire, in Cincinnati, between the hours of eight o'clock, A. M., and seven o'clock, P. M., personally came before me, Enos Woodruff, an associate judge for the county of Hamilton aforesaid, Joseph Guest, who, being first carefully examined, cautioned, and sworn to testify the whole truth, to be read in evidence in the above entitled cause, does depose and say, that the annexed plat was made by him as city surveyor, or in pursuance of an order of court for that purpose, and is a correct copy of those returned to court. Deponent says, he was called upon by G. W. Jones to lay out Harmer's lots, according to a decree of court, as he understood, as well as he recollects. Mr. Jones said they could not make a better of it than to take Ethan Stone's statement of the boundaries; and that Mr. Stone would be on the ground for that purpose. He also referred me to Mr. Este for the same purpose, who told me about the same; and that Mr. Stone did come upon the ground, and designate the boundaries, and the survey was made accordingly, and it is described on the map by light blue lines, and the letters J. K. N. L. D. M. At a subsequent period he was called upon by G. W. Jones, or Josiah Harmer, to fix the point for building the brick house, marked S, on the plat of the intersection of Front and Ludlow streets, and he fixed the corner where the house is now built. He believes the house was built by or for the heirs of Harmer, subsequently to the time of fixing the corner. Deponent further says, that Mr. Jones went with him on the ground, in company with Mr. Stone, but is not certain he was there when the survey was made. He recollects of no differ-

ence between Mr. Jones and Mr. Stone, at the time, as to the situation of the ground. Mr. Jones did not pretend to have any personal knowledge of the situation of the lots; after the survey, according to the blue lines, was made, in pursuance to the decree, he handed it to Mr. Jones while standing on the steps of the U. States' Bank.

JOSEPH GUEST.

E. Stone's deposition.

Same time and place came Ethan Stone, who also was carefully examined, cautioned, and sworn to testify the whole truth, does depose and say, that G. W. Jones called on him, and said that Mr. Este wanted to see about settling the Harmer business; that he accordingly called on Mr. Este, and agreed to meet on the ground at any time he should be notified for that purpose; that he was accordingly notified by Mr. Este or Mr. Jones, he thinks by the latter, and attended on the ground in company with Mr. Jones, Mr. Este, and Mr. Gest, the surveyor. There was no disagreement relative to the survey, except as to the side of the street where the survey should commence, whether on the north or south side. Mr. Jones contended that the survey should commence at the intersection of the streets on the north side, and deponent on the south. Mr. Jones claimed the four lots on the southwest corner of the block commencing at the intersection of Front and Ludlow streets on the north side of Front street. In the course of our conversation relative to it, deponent observed that if they were not to commence at the west line of the lot, he would prefer they should commence 30 or 40 feet further east, for the corner would be more valuable to him than the strip they would take on the east side. Mr. Jones said that would not do; for, as they were entitled to the corner, they should take the corner; and that, on examining and seeing how the line run, Mr. Jones acquiesced in it, and directed the survey to be made accordingly; which was done. Mr. Jones, on seeing how the line run, asked where they should get the balance of their land, seeing it run across Ludlow street. To which deponent replied, that if Congress had sold land to which they were not entitled, they would doubtless remunerate them. Sometime after this, Dan Stone applied to me, (deponent,) to know if he would sign a release for the corner of Ludlow and Front streets, a part of the property release to the heirs of Harmer, on which the brick house now stands. He refused to do any thing about it, one way or the other, having already released it to Harmer's heirs. That Mr. Dan Stone then stated to deponent, that he had understood Mr. Jones that it was for the purpose of quieting and confirming the Harm claim. Deponent then told him, if that was their only object in it, he had no objections in doing it. A few days afterwards, he returned, and stated that Mr. Jones had told him expressly that he had no other object in view than as above stated. On which representation, deponent executed a deed of release to Timothy Kirby, which is now shown me, bearing date 8th August, 1827. Deponent further states, that Mr. Este and Mr. Jones were both on the ground the whole time the survey was making by Mr. Gest.

Q. by plaintiff. Did you know that Harmer owned any lots east of Ludlow street, previous to the decree?

Answer. I did not. I knew he claimed lots, but did not believe he would establish a claim to any east of Ludlow street.

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Q. by same. What circumstances induced you to contend that the survey for the four lots should begin on the south side of Front street?

Answer. Because Riely made a survey for me in 1803, which established that corner as the western boundary of my claim, now marked by the letter I, on the survey of Mr. Gest, which corner was according to the survey of Mr. Symmes, as I understood.

Q. by same. Did you ever see the survey of Symmes, to which you have alluded?

Answer. I have not to my knowledge.

Q. by same. Was it your understanding that, in 1803, that the survey by Symmes had been made several years previous?

Answer. I have never known any thing relative any surveys. I came here in 1802, and, in the winter following, bid off the fraction, as appeared on the general plat, and employed Mr. Riely, an old resident, a surveyor, to survey and plat it, which he accordingly did.

Q. by same. At the time of your purchase, was the eastern line, or the eastern side of the Garrison reservation, known?

Answer. My impression is, that it was pretty well known; but I am not certain.

Q. by same. At the time you made the purchase, you knew or understood, that Symmes had laid out the ground which you purchased, into lots; did you not?

Answer. At the time I made the purchase, I knew that some of it had been sold in small tracts; but, as to any particular survey, I could find none on record, nor did I know of any. The fraction I purchased, contained a title above one hundred acres, lying east of the Garrison reservation, running back to the hill.

Q. by same. Have you any personal knowledge that the now eastern line of Ludlow street was the western line of the fraction you purchased?

Answer. I have no personal knowledge, except being present at several surveys, and know that it now is considered the established line.

Q. by same. Was not Mr. Jones unwilling the survey of the four lower lots should commence at the letter I, as marked on the survey of Mr. Gest; but did he not prefer that it should begin at the corner of Ludlow and Front streets, on the north side?

Answer. Mr. Jones first objected to beginning on the south side of Front street; but when he came to examine how Symmes had laid out the lots, and see how the lines run, he then acquiesced in beginning on the lower side, stating something like this: he believed that Stone was right for once, or some remark to that effect.

Q. by same. When you made the survey, under the decree, had you any map or survey present, of lots laid out by Symmes, east of Ludlow street?

Answer. There was a small map, said to be a copy of Judge Symmes' plat of that ground, which was referred to, to see how the lines run.

Q. by same. And did you make that plat a data for running the lines?

Answer. It was only referred to, to show Mr. Jones that it was an equitable mode of commencing, as they claimed to commence to the west.

Q. by same. Then you began the survey at the letter I, in consequence of what Riely told you in 1803, and also in consequence of the several surveys that had been made?

Ans. It was in consequence of the several surveys that had been made, and my belief that it was my westward boundary.

Q. by same. How many surveys had been made previous to this time, or do you know any other than that made by Riely, and the one made when the Garrison reservation was laid out into lots?

Answer. I have had it once surveyed by Mr. Mansfield, and two or three times partially surveyed by others.

Q. by same. Were all the surveys, according to your recollection, based upon the survey made by Riely, in 1803?

Answer. They were all, except Mansfield's.

Q. by same. At the time you purchased the fraction, in 1803, was it your understanding that the west fractional line was a meridian, or north or south line?

Answer. At this time, I knew nothing relative to it.

Q. by same. Is the deed of release which you executed to Harmer's heirs, which is now shown you, and its date 22d December, 1821?

Answer. Yes: it is.

Q. by same. Did you ever understand, by Symmes, that he ever laid out several blocks of lots east of Ludlow street? (This question objected to by defendants' counsel.)

Answer. I have no recollection of it.

Q. by same. Do you recollect that Judge Symmes was ever present at any of the surveys of which you have spoken?

Answer. I do not.

Q. by same. Are you acquainted with hand-writing of John Cleves Symmes? and do you recognize his hand on a survey of lots now shown you, and bearing date 25th April, 1808; and do you perceive his hand-writing on the lots Nos. 1, 2. 23, 24, as deeded by him to General Harmer?

Answer. I am acquainted with his hand-writing, and have no doubt they are in his hand-writing, except the figures: and further deponent saith not.

ETHAN STONE.

Hogan's deposition.

Same time and place, came Septimus Hogan, who, being likewise carefully examined, cautioned, and sworn to testify the whole truth, does depose and say, that he wished to take a lease on part of Harmer's property, on Front street, east of the ground leased to Wanewright. He went to Mr. Jones, who informed that Wainwright had leased the extreme east of the Harmer property, on Front street, on which Mr. Wainwright built a blacksmith's shop about three years since; but that he could lease him ground west of Wainwright's, belonging to Harmer's heirs; but finding, by the statement of Mr. Jones, that Harmer owned no ground east of Wainwright's, I leased a lot of Mr. Morris, immediately east of Wainwright's shop, and a part of the ground on the plat, marked as in controversy, which deponent was about to build on the property leased from Morris, adjoining to Wainwright's shop. I had the lot surveyed by Mr. Gest, and stakes placed at the corners. He afterwards showed Mr. Jones the stakes, as fixed by Mr. Gest on the line between him and Mr. Wainwright's, and he appeared to be perfectly satisfied as to that's being the proper line between Harmer's heirs and Morris. This deponent further says, that the triangle east of Wainwright's shop to the junction of Front and Columbia streets, was all built on before deponent ever heard of Harmer's claiming farther east on Front street than Wain-

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wright's shop. Deponent further states, that the lease which he obtained from Morris, had been cancelled, and that he has no interest whatever in the event of the suit.

SEPTIMUS HOGAN.

Whetstone's deposition.

Same time and place, came John Whetstone, who also being carefully examined, cautioned, and sworn to testify the whole truth, does depose and say, that, in the spring, in May or June, 1822, I made a contract with Mr. Jones, to build a house for the heirs of General Harmer, on the corner of Ludlow and Front streets, the northeast corner of the intersection. He then occupied the lot at the intersection, and had occupied several years, under Mr. Stone. Mr. Jones proposed to him to build the house, but when he drew the writing, he drew it in the name of Mr. Josiah Harmer; but, having ascertained that Mr. Harmer was not of age, he objected on that account to the contract being with him, and Mr. Jones agreed to guarantee it. Deponent built the brick house, as standing at the intersection of Ludlow and Front streets. Deponent further states, that Mr. Jones paid him for the building. Deponent states that he had occupied all the ground released by Stone to Harmer, except just at the corner where a stable stood. Deponent states further, that, after the property was released by Stone to Harmer's heirs, he paid George W. Jones the rent for it for three years; and he had it rent free the year he put the building. Deponent further states, that Mr. Josiah Harmer was here at the time the contract was made for building the house, and signed it on his part.

JNO. WHETSTONE.

Drake's deposition.

Same time and place came Daniel Drake, who likewise being carefully examined, cautioned, and sworn to testify the whole truth, does depose and say: I was present on the site of old fort Washington, at the time Joseph Gest, the city surveyor, made a survey of the foundation of that fort, a plat and description of which is now before me, and I believe the lines and angles of said fort, as laid down by him, are accurate, or as nearly accurate as it is possible to fix them.

Question. How is it that you are able to testify to this fact?

Answer. Jones lived in the rooms that were occupied by the commander of the garrison. This was in 1802 or 3; and, afterwards, in 1808, when the reserve was sold by the Government, I purchased several lots, which included the S. E. angle and block house, and built upon the same, where I resided from 1812 to 1823, during which period the foundations of the fort were every where to be seen, and could be compared with the lines and corners of the lots and streets. Finally, in preparing a plat of the town, for the picture of Cincinnati, in 1814, I took great care and pains to lay down the scite of the fort correctly, and find that the plat made by Mr. Gest corresponds almost exactly with it.

Question by the defendants. How did fort Washington front, and where was the principal gateway?

Answer. It fronted to the south, a little inclining to the east: the whole south front was on the south side of third street, but not exactly par-

allel to it. The southwest block-house was further from the street than the southeast. The great gate was, I believe, in the centre of the south line of block-houses.

Question by the defendants. What would be the location of four lots, the calls for which were lying directly in front of fort Washington?

Answer. They must all be between Ludlow street and Broadway; that is, west of Ludlow street.

DAN. DRAKE.

Longworth's deposition.

Same time and place came Nicholas Longworth, who, being first carefully examined, cautioned, and sworn to testify the whole truth, does depose and say, that he came to Cincinnati upwards of twenty-five years since; from which time he has constantly resided in Cincinnati, and still resides in it, and, *and*, dealing largely in the purchase and sale of lots, has found it his interest to investigate titles. The lots between Broadway and Ruffin's corner, on the river, and north of it, were then a common, except the artificer's yard, which was on, or very near Eastern row, now Broadway, by *willming* Eastern row by addition from the Garrison reservation. There was then, (upwards of twenty-five years since,) and for some years thereafter, a cellar west of Ruffin's corner, and between that and Ludlow street, called Gov. St. Clair's cellar; and it was then stated that St. Clair owned, or had owned lots in that vicinity, the cellar being on one of them. But I never met with a person, till several years after my residence in Cincinnati, who would state what number of lots were owned by St. Clair. I also understood that General Harmer owned four lots west of St. Clair's lots; the entire fraction had been the property of John C. Symmes, which fraction extended to Eastern row, at the river, I think the west side of Eastern row; and Symmes had laid out an addition to the town of Cincinnati, on a part of it; sold out lots on said addition to the town, and out-lots in the vicinity, at an early day; and many of both in-lots and out-grounds, had valuable improvements thereon. The remaining interest of said Symmes, in said fraction, had been held at sheriff's sale, and purchased by E. Stone, esquire, who claimed, under said purchase, all the unoccupied and undeeded lots. At the time Symmes laid out the town plat, and sold lots, he, himself, had no legal title, but gave contracts to the purchasers; at least such was his practice, from the titles that have come within my knowledge, and such he informed me was his practice. John C. Symmes, in his life time, claimed the Garrison reservation, and considered the Government as only having the temporary use of it for a garrison; and there were several lots within the reservation, and sold by him to Captains Platt, Strong, and others of the army, as Symmes stated, and, as I ascertained in the investigation of titles. E. Stone, under his purchase, took possession of, and claimed the lots from Ruffin's corner to the Garrison reservation. Several years since, I learnt that the extent of St. Clair's claims to lots in the vicinity of St. Clair's old cellar, was ascertained that it covered, I think, 15 or 16 lots, and it was named to me by a friend of the claimants, that I might be apprised of the claim, if I had lots within it. In consequence of this intimation, I obtained the copy of a deed from Gov. St. Clair to John Fricker, and ascertained the facts connected with it. If my memory serves me, as early as 1790, Gov. St. Clair conveyed to John Fricker 15 or 16

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lots in the town of Losanteville, commencing at number 1, and ending at number 24; and that Fricker was killed, or died soon thereafter, and his heirs had been unable to find where the town of Losanteville was (the same being the original name of Cincinnati.) If my memory serves me, lot No. 1 did not exactly correspond in the call for the streets, with the plat of Symmes, as recorded in 1811; but lot number 24 did, and bound on the Garrison reservation. If my memory serves me, it included a full lot, then owned by me, several years since. I was employed by Jesse Hunt, who represented himself to be the agent of General Harmer, as an attorney at law, to aid in a suit about to be brought by General Harmer to recover certain lots lying by the calls of his deed, part in front, and part east of fort Washington, then in possession of, and claimed by E. Stone. If my memory serves me, a suit was brought, and abated by the death of General Harmer; but in this I may be under a mistake. After Harmer's death, the suit was brought to a close, and a final decree obtained in chancery. I think Mr. Este was the attorney, who argued the cause with me for the heirs of Harmer. Before any deed was obtained, under the decree, from E. Stone, G. W. Jones superseded Jesse Hunt in the agency, and was acting as the agent of Harmer's heirs, at the time Mr. Gest made the survey on which E. Stone executed the deed. Great difficulty existed in ascertaining where the lots lay, and, I well remember when the survey was made, that Mr. Stone was unwilling to let them include the corner, of which John Whetstone was in possession, I think, under lease from E. Stone; but Mr. Stone eventually consented to let them take the corner; and, if my memory serves me, John Whetstone accounted to G. W. Jones, esq. as the agent of Harmer's heirs, for the back rents then due to Ethan Stone, and became a tenant under Harmer's heirs, and, subsequently, under a contract with, I think, one of the heirs of G. W. Jones, built a brick house at the lower corner of Ludlow and Front streets; and I know that George W. Jones, esquire, has, to the present time, acted as the agent of the heirs of Harmer for the lots, leasing them, and receiving the rent; and I was present, a few months since, when one of the tenants paid his rent to G. W. Jones as the agent, in the presence of one of the heirs of Harmer, of full age, and with his knowledge; and said Jones gave a receipt for the money as agent. I am one of the administrators of John H. Piatt, deceased, and, as such, sold the triangle now owned by George Morris, as the property of said Piat, at public sale, about 4 years since. George W. Jones was present, and bid on the triangle; and, I think, one other lot, of which Daniel Gano became the purchaser, a part of which are now claimed by Harmer's heirs. The supposed quantity in each lot, was stated, and sold under the survey of Mr. Gest, esquire, and Mr. Jones gave no notice of any claim, by Harmer's heirs, east of the ground deeded by them, under the decree. Sometime thereafter, when Mr. Morris was about to lease the triangle, and wished the administrators of Piatt to lay him off his ground, I called on Mr. Guest for that purpose, and sent notice to Mr. Jones, as the agent of Harmer's heirs, of the intended survey. He did not attend; but I subsequently stated to him that the survey had been made, and the line ascertained, as surveyed and staked by Mr. Guest, at the time of Mr. Stone's release to the heirs of Harmer; against which he made no objections; but I understood him as acquiescing in its correctness.

Question by defendants. If Harmer's lots were bounded by lots of A.

St. Clair, on the east, and the deed to Fricker truly described those lots of St. Clair, where would Harmer's lots lie?

Answer. They would lie west of the ground released by Ethan Stone; and the whole within the Garrison reservation.

Where have you always understood the ground, lying directly in front of Fort Washington, to be, in reference to the way the streets in Cincinnati run back from the Ohio river?

Answer. That it would lie west of Ludlow street, and between that and Eastern row, now widened into Broadway.

Question by defendants. Did Mr. Barry at any time go with you, and point out the location of Harmer's lots. If so, where did he locate them?

Answer. A short time before Berry gave his deposition in this cause, and when it formed the topic of conversation, I met him near the property; and he then walked with me on Second street, between Broadway and Ludlow street. He stated that the ground was so much changed, by filling up and buildings, that he could not state with precision; but, to the best of his recollection, the brick house of Mr. Prince, jun'r, (then occupied as a stable, was on the lots of Harmer; said stable is west of Ludlow street; the distance I have never estimated, but probably 80 or 100 feet. Said Berry stated that they proposed to take his deposition, but that he would not undertake to swear where the lots did lie, the ground was so much changed. At the request of counsel for plaintiff, I state that, as one of the administrators of John H. Piatt, I sold the ground in controversy, and deeded the same, in pursuance of the provisions of the statute, and, on that account, and some other causes, felt interested for the defendants: which conveyances were, I think, made about four years since. I never knew any original deed from St. Clair to Fricker; but my knowledge was derived from verbal information, and what was sent as extracts from the deed. The plat of the lots referred to by me, as recorded in 1811, is now before me, or rather a copy from the records, and I have written my name theron. On further consideration, I state that the town of Cincinnati was laid off on the entire section, and, I think, Eastern row was taken from the eastern side of the section.

N. LONGWORTH.

I hereby certify, that the foregoing depositions of Joseph Gest, Ethan Stone, Septimus Hogan, and John Whetstone, were reduced to writing by me, in their presence, and in the presence of the counsel of both of the parties, and subscribed by them; and that the deposition of Daniel Drake and Nicholas Longworth were reduced to writing by themselves, in my presence, and in presence of the counsel of both parties, and likewise subscribed in my presence, by them, at the time and place specified in the annexed notice. I further certify, that I am not of kin to, or of counsel for, either of the parties, neither am I interested in the event of the suit.

In testimony whereof, I have hereunto subscribed my name, and affixed my private seal, this seventh day of July, 1829.

ENOS WOODRUFF, [SEAL.]
Associate Judge of Hamilton county.

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D. K. Este's deposition.

U. S. Circuit court, seventh circuit, O. district:

LESSEE of the heirs of Josiah Harmer, dec'd,
vs.
D. GWYNNE, et als. } *Ejectment.*

By consent of the counsel for the parties, in the following deposition, is to be received as if he had been present in court, David K. Este deposeth and saith, that, some time in the summer of 1821, he was requested by George W. Jones to accompany him to the lots which had been before that time recovered by the heirs of General Harmer of Ethan Stone, by a decree in the supreme court of the State, in the county of Hamilton, viz: eight lots in Symmes' subdivision, the numbers not recollected, the boundaries of which are now in controversy. Mr. Jones remarked that Mr. Gest, the surveyor, was going also, and the object was, to ascertain the boundaries of the lots. We went; and, whether Ethan Stone was in company, I do not recollect; when, on the ground, there appeared some difficulty to ascertain the precise location of the lots. Mr. Hunt, the former agent of General Harmer, was not there. An improvement, I think a house, has been erected by Mr. Stone, or by some one claiming under him, on what Mr. Jones supposed to be one of the lots; if I mistake not, the southwest corner lot. Either from the statement of Mr. Stone, if he were present, or an allegation by Mr. Jones or Gest, that Mr. Stone had said where the corner was, as well as I can now remember. Mr. Gest commenced running round the lots, by beginning on the south side of Front street, at a point for the southwest corner. This would include the improvement. Mr. Stone had, for years, contested the right of the heirs of General Harmer to recover these lots; and, either from Mr. Stone himself, or from some other person, I understood that he complained of it as a peculiar hardship, that the buildings aforesaid should be taken from him, or from the person to whom he had sold. I had been counsel for the heirs of General Harmer in the chancery suit; and, after the rendition of the decree, advised Jesse Hunt that Mr. Stone was directed in the decree to convey the lots to him, in trust, for the heirs, &c. When the deed was drawn, or by whom, I do not know. After Mr. Jones came to the city, I understood that he took possession of the lots for the heirs of General Harmer, and paid the taxes.

D. K. ESTE.

Sworn to, and subscribed in open court, July 22d, 1829.

WM. K. BOND, *Clerk.*

Consent to read deposition.

I have agreed to except the within deposition from Mr. Este, *if* the counsel for the plaintiffs consent to its being read, and release him from subpœna.

C. HAMMOND, *for defts.*

We agree the above may be read, provided the state of the case shall be such, that Mr. Este could be allowed to testify the same facts, were he present in court.

CASWELL & STARR, *Att'y for pl'ff.*

22d *July*, 1829.

It was then shown that John H. Piatt had, in his life time, purchased the interest of Thomas T. Kinney, a dormant partner of Ethan Stone, in the purchase of the lands on execution, in which is contained the land in controversy; that John H. Piatt, having obtained a decree in chancery for his portion of said land, had it aparted to him, including the land in controversy; that John H. Piatt died, and his widow intermarried with David Gwynne, one of the defendants, and that, on a petition for dower, the part of the land in controversy, now occupied by defendant, Gwynne, was assigned to her. The writ of possession, given in evidence, is as follows:

Writ of possession.

STATE OF OHIO, *Hamilton county, ss. To William Ruffin, esquire, sheriff of our said county, greeting:*

On petition of the administrators of John H. Piatt, deceased, for sale of real estate, appraisers or commissioners appointed by the court to value and return their appraisement of the property, particularly and specially described in schedule annexed to petition, to whom an order, issued for that purpose, having returned the appraisement thereof, to wit, Thomas Henderson, William Oliver, and Jabez C. Tunis, which is filed; and, thereupon, the court having directed dower to Martha A. Gwynn, late Martha A. Piatt, to be set off and assigned to her, as by reference to the minutes of the court will show, and an order for that purpose, with directions and special command, having issued to William Ruffin, esquire, sheriff of our said county of Hamilton, on which his return of proceedings has this day been filed, as will at large appear by schedules annexed; which, being by the court inspected, court confirm the proceedings so far as had, and approved of same; and ordered that the administrators give notice, in writing, to Martha A. Gywnne, late Martha A. Piatt, and David Gwynne, her husband, within ten days thereafter, that this proceeding has been had; and that if they elect to take by said assignment, and under the said proceedings, that they signify the same in writing, within ten days thereafter; and, if they accept the same, the same shall stand confirmed to them thenceforth; and the writ of seizen shall then and thereupon issue from this court to the sheriff of this county, commanding him to deliver full possession of her dower, assigned to her as aforesaid; and the court further ordered, that, of so much of the property as has been assigned to the widow aforesaid, for her dower, the remainder therein be valued; which said notice, in writing, to Martha A. Gwynne, late Martha A. Piatt, and David Gwynne, her husband, was duly served, and returned, and endorsed; upon which the following words and figures appear, to wit:

"Cincinnati, January 27th, 1825—We hereby acknowledge notice of the within stated proceedings within the time specified, and, having examined the assignment of dower as therein mentioned, which appearing to be legal and equitable, the same is hereby accepted."

DAVID GWYNNE.
MARTHA A. GWYNNE:

We, therefore, command you that, without delay, you cause the said Martha A. Gwynne late Martha A. Piatt, to have the full seizin of the following described property, as her dower set off to her by the commissioners

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appointed for that purpose, to wit: "Parcel numbered in the petition and schedule nine, being the undivided moiety of lot number fifty-three, in Piatt and Spencer's subdivision, fronting thirty feet on Broadway, and in depth ninety feet, on which there is a two story frame building. Parcel numbered in the petition and schedule 14, being thirty feet of ground, fronting off Fifth street, east of Broadway, and in depth abouth thirty-three feet on the south part of out-lot number one, and situate between property owned by Daman and Maddox. Parcel numbered in the petition and schedule 17, being part of lot number twenty-nine, fronting twenty-nine feet on the east side of Broadway, and in depth one hundred feet, bounded on the north by Reiley's lots, which is on the coner of Congress and Broadway streets. on the above part of lot No. 29, there is a blacksmith's shop, and frame tenements, and the same is described in a deed of partition between Robert Riely and John H. Piatt, dated 24 September, 1817, and recorded in Hamilton, in book R, page 173. Parcel numbered in petition and schedule 18, being that part of lot number twenty, in square number 2, fronting on Congress street about thirty-six feet, and running back half the depth of the original lot, to the rear of John P. Spenning's lot, purchased of said John H. Piatt; On the above piece there is a frame building. This lot was patented to John H. Piatt, on the seventh day of February, 1817. Parcel numbered in petition and schedule 23, being the triangular lot at the northeast intersection of Congress and Ludlow streets, fronting sixty feet on Congress street, more or less, bounded E. by Harmer's upper block: a two story brick house on this lot. The above is one of the pieces decreed by the supreme court of Hamilton county, Ohio, to be held in severalty in the case of John H. Piatt and representatives against Ethan Stone. Parcel numbered in the petition and schedule 30, being lot number nineteen, at the corner of Broadway and *and* Seventh streets, fronting on the west side of Broadway forty-five feet, and running west same width ninety feet; on this lot there is a frame building, &c. This piece, deeded to John H. Piatt, by Elijah Maddox and wife, September 1, 1814. Parcel numbered in petition and schedule 32, being a piece of ground on the upper side of Hill Market, or Fifth street, parts of lots numbered 243 and 244, twenty feet nine inches in front, including nine inches of a brick wall on the same, depth one hundred and ninety-five feet, more or less, to the Ten Foot alley. The above property is described in two deeds, one from Jacob Burnet and wife, and Samuel Fisher and wife, to John H. Piatt, John Armstrong, and Philip Grandin, dated 26th day of November, 1819, recorded in Hamilton county, in book T, No. 1, page 407 and 408; and the other from Benjamin M. Piatt and wife to same person, dated 15th Feb'y, 1819, and recorded in same book, page 11. Parcel numbered in petition and schedule 87, being part of lot number three hundred and two, on north side of lower Front street, fronting on same forty-three and a half feet, depth two hundred feet, on which there is a two story frame house. This piece, more particularly described in a deed from Alexander Maddox to John H. Piatt, dated 31st August, 1818. For the said Martha Ann's dower, in the unimproved property mentioned in the petition and schedule, lying in the city of Cincinnati, we have set off, and assigned to her parcel, numbered in the petition and sch. 24, being a lot of ground fronting forty feet on Columbia street, and extending same width to Congress street, lying between Harmer's lower blocks and lots nine and ten, west, in E. Stone's subdivision. See decree supreme court, in Hamilton county, Piatt, as representative, against

Ethan Stone, for description of this piece. Parcel numbered in petition and schedule 31, being the south half of the south half of lot number sixty-one, fronting on Sycamore street twenty-five feet, and running back the depth of lots of town plat. Parcel numbered one in amendment of petition, being lot number forty-five in Piatt and Spencer's subdivision, east of Broadway, on Sixth street, fronting twenty-eight feet 6 inches. Parcel numbered in petition, of schedule 38 and 39, being lots number eighteen and seventeen, in square number 2, in Benjamin M. and John H. Piatt's subdivision, fronting thirty-two feet four inches on Race street, depth ninety feet. Parcel numbered in petition and schedule 43 and 44, being lots number ten and eleven, in same subdivision, fronting Wayne street, and thirty-two feet four inches, depth one hundred and twenty-five. Parcel numbered in petition and schedule 49 and 50, being lots number sixteen and seventeen, and square number four, fronting on Elm street thirty feet each, depth ninety feet each, in Benjamin M. and John H. Piatt's subdivision. Parcel numbered in petition and schedule 55 and 56 and 60, being lots number twenty-five, twenty-six, and thirty, in square four, fronting on New Market street 32 feet 4 inches each, in depth ninety feet: Benjamin M. and John H. Piatt's sub. Parcel numbered in petition and schedule 61 and 62, being lots number twenty-eight and twenty-seven, in square number six, fronting thirty-four feet each on Wayne street, in depth ninety feet: Benjamin M. and J. H. Piatt's subdivision. Parcel numbered in petition and schedule 63, 64, and 68, being lots number one, two, and six, fronting on Race street 32 feet 6 inches, in square number five, in depth ninety feet: Benjamin M. and J. H. Piatt's subdivision. For the said Martha Ann's dower in the improved property, mentioned in the petition and schedule, lying exterior to the city of Cincinnati, we have set off, and assigned to her parcel, numbered in the petition, and *and* schedule 5, in Hamilton county, being fifty-seven acres and two-hundredths of an acre, more or less, in Columbia township, adjoining what is called the Bruce property; the said tract lying in the S. E. corner of sec. 32, T. 4, fractional range 2 of township in the Miami purchase, and described in two deeds to John H. Piatt, John Armstrong, and Philip Grandin, both dated the 11th day of January, 1819; one from John Bruce, and the other from Timothy Callard. Parcel numbered in petition and schedule one, in Montgomery county, being one hundred and twenty-two acres and $\frac{2}{100}$ of an acre of land, adjoining the town of Miami or Miamisburgh, and sections 25 and 31, T. 1, R. 6, between Miami river, particularly described in a deed from Samuel Archer, sheriff of Montgomery county, in John H. Piatt, John Armstrong, and Philip Grandin, dated 15 December, 1819, recorded in the records of Montgomery county, book H, page 75. Parcel numbered in petition and schedule, in Butler county, being one hundred and thirty-five acres of land, parts of sec. 34, T. 3, R. 1, east, in the county of Butler aforesaid, particularly described in a deed from Walter Armstrong and wife, to John H. Piatt, John Armstrong, and Philip Grandin, dated the 27th April, 1818, and recorded in Butler county, book G, page 172: For the said Martha Ann's dower in the unimproved property mentioned in the petition and schedule, lying exterior to the city of Cincinnati, we have set off and assigned to be held by her, parcel numbered in petition and schedule one, in Warren county, being one hundred and sixty acres of land S. W. qr., S. 2, T. 5, entire, range 3, Miami purchase, described in a deed from William Lytle and wife, to John H. Piatt, dated 25th January, 1819, recorded

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in Warren county, book E, page 27, &c. Parcel numbered in the petition and schedule one, in Champaign county, being part of lots number eight and nine, in the town of Urbanna, as numbered on town plat, fifty-three feet front on Detroit street, described in a deed from Benjamin Doolittle and wife to John H. Piatt, 12th day of September, 1816, recorded in Champaign county, in liber C, page 116, &c. Parcel numbered in petition and schedule 2, in Champaign county, being part of lot number one hundred and sixty-three, in the town of Urbanna, fronting on Erie street fifty feet in depth; the depth of the original lot described in a deed from John Shyrock and wife to John H. Piatt, 20th day of May, 1815, recorded in Champaign county, book B, number 1, page 283. For the said Martha Ann's dower in the parcels mentioned in the petition and schedule mortgaged to the Bank of the United States, we have assigned and set off to be held by her, parcel mentioned in petition and schedule 83, being seven-eighths of an acre in two parcels lying in out-lot number forty-one, in the town of Cincinnati, and particularly described in a deed from Charles Robinson and wife to John H. Piatt, John Armstrong, and Philip Grandin, dated 25th day of Sept., 1814, fronting on Vine street; the above deed recorded in Hamilton county, book R, page 368. On one of the above pieces, there is a small tenement, the other cultivated as a garden. Also, parcel numbered in the petition and schedule 82, being the north half of out-lot number forty-seven, described in deed from JohnGibson, jun'r, and Thomas Heckewalder and wives, to John H. Piatt, John Armstrong, and Philip Grandin, dated 23d June, 1818, recorded in Hamilton county, in book S, page 265. The above piece contains two acres. For the said Martha Ann's dower, in the parcel mentioned in the petition and schedule, and numbered 21, being lots numbers 6 and seven, fronting on Columbia street, on which there is a stone building, &c., mortgaged to Lewis Howell, we award and assign her one-third part of the rents and profits thereof, the same not appearing to admit of division. In the parcels mentioned in the petition and schedule as mortgaged to Mrs. Adams, being parcels numbered 19 and 20, the same not having been valued, and not appearing to come within this order, in consequence of their having been sold under the mortgage, since the petition was filed, we have not made any assignment of dower, or equivalent therefor. We have assigned to the said Martha Ann, to be held by her for dower, parcel numbered in petition and schedule three, in Hamilton county, (which we omitted to insert in its proper place amongst the unimproved property set off, lying exterior to Cincinnati,) the same being forty acres of land in sec. 33, T. 3, fractional range 2, M. P., and being part of eighty acres conveyed by Samuel McHenry to John H. Piatt, by deed, dated 20th November, 1816, recorded in Hamilton county, book 2, page 86: the other part of said eighty acres disposed of by said Piatt to Danks and Thompson. In the parcel mentioned in the amendment to petition and schedule, lying in Piatt's and Grandin's subdivision, we have made no assignment of dower, or equivalent therefor. The *the* same having been accepted, by order of court, dower having been previously set off in those parcels, with the appurtenances: and that you make due return hereof, to our said court of common pleas, to be held at Cincinnati, within and for the county of Hamilton aforesaid, on the fourth day of April, A. D. 1825.

Witness, the honorable George P. Torrence, esquire, president judge of our said court of common pleas, at Cincinnati, this 25th day of March, A. D. 1825.

Signed DANIEL GANO, *Clerk.* [L. S.]

CINCINNATI, 1*st April*, 1825.

Having had notice of the issuing of the within writ of seizen, the sheriff is hereby authorized to make return of the same to the court with this endorsement: that possession of the several tract, lots, and parcels of land therein described, as set off for dower, has been given me by the said Benjamin M. Piatt and Nicholas Longworth, administrators as aforesaid.

DAVID GWYNNE.

1825, April 1st. I have this day caused the said Martha A. Gwynne, late Martha A. Piatt, to have the full seizen of the within described property, as her dower, set off to her by the said commissioners appointed for that purpose, as per the acknowledgment of David Gwynne, husband of the said Martha A. Gwynne, hereon endorsed.

Signed WILLIAM RUFFIN, *Sheriff Ham. cy.*

THE STATE OF OHIO, *Hamilton county, ss.*

I, Daniel Gano, clerk of the court of common pleas within and for the county of Hamilton, do hereby certify the above and foregoing to be a true copy of the writ of possession issued in the assignment of dower made to Martha Ann Gwynne, late Martha Ann Piatt, on petition of administrators of John H. Piatt, deceased, for sale of real estate.

In testimony whereof, I have hereunto set my hand, and affixed the seal of our court, at Cincinnati, this twenty-eighth day of March, Anno Domini 1826.

DANIEL GANO, *Clerk.* [L. S.]

It was also proven by Benjamin M. Piatt, that, on the eighteenth day of July, 1825, the administrators of J. H. Piatt, dec'd, sold, under an order of the court of common pleas for Hamilton county, divers lots of land, and, among the rest, the remainder of the estate in the lot assigned to Martha A. Gwynne for dower, and that David Gwynne became the purchaser thereof. That George W. Jones was present on the day of sale; and at the time the said remainder was sold and set up, no claim thereto, on behalf of the heirs of Harmer, was made. The defendants also gave in evidence a deed from William Oliver and wife to George Morris, which is as follows; and also a deed from the administrators of John H. Piatt to George Morris, of the following tenor:

Deed from Oliver to Morris.

This indenture, made the sixth day of September, in the year of our Lord one thousand eight hundred and twenty-six, between William Oliver and Eliza, his wife, of the city of Cincinnati, of the first part, and George Morris, of the same place, of the second part, witnesseth, that the said William Oliver, for and in consideration of the sum of three hundred and seventy-five dollars, lawful money of the United States, to him in hand well and truly paid by the said George Morris, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, release, convey, and confirm, unto the said George Morris, his heirs and assigns for ever, all the undivided half of that triangular lot of ground situate at the junction of Columbia or Second street with east Front streets, being

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about ninety feet in length, and about forty feet wide at the broadest part of said lot, bounded on west by Harmer's ground, on the north by Columbia street, and on the southeast by east Front street, being the same property sold by the city marshal as the property of Ethan Stone at the suit of Wm. Bar, assignee of John F. Keys, be the same more or less, and all the estate, right, title, interest, claim, and demand of him, the said William Oliver, of, in, and to the said premises, and every part thereof, together with all and singular the privileges and appurtenances to the same belonging, or in any wise appertaining, and the rents, issues, and profits thereof: to have and to hold the premises hereby bargained and sold, or meant or intended so to be, with the appurtenances, to the only proper use and behoof of the said George Morris, his heirs and assigns forever. And the said William Oliver, for his heirs, executors, and administrators, doth promise, covenant, and agree to, and with the said George Morris, his heirs, executors, administrators, and assigns, that he is the true and lawful owner of the premises hereby granted, and hath good right, full power, and lawful authority to sell and convey the same in manner and form aforesaid. And further, that he, the said William Oliver, heirs, executors, and administrators, will warrant and for ever defend the aforesaid premises, with their appurtenances, and every part and parcel thereof, unto the said George Morris, his heirs and assigns, against all persons claiming, or to claim by, from, or under them, or any of them.

In witness whereof, the said William Oliver, together with Eliza, his wife, who hereby relinquishes her right of dower in the premises, have hereunto set their hands and seals, the day and year first above written.

WILLIAM OLIVER, [SEAL.]
ELIZA OLIVER. [SEAL.]

Signed, sealed, and delivered in the presence of
J. H. GROSBECK, ISAAC G. BURNET.

Erasure of "the east half of lot situate on east Front street, in the city of Cincinnati, being;" "and east, with the appurtenances, and all" of the manuscript, and, "or, by, from, or under any other person or persons whomsoever;" of printed before signing.

THE STATE OF OHIO, *city of Cincinnati, ss.*

Before me, mayor of the city of Cincinnati aforesaid, personally appeared William Oliver, together with Eliza, his wife, the above named grantors, and acknowledged the above deed of conveyance to be their voluntary act, and deed, for the uses and purposes therein mentioned. And the said Eliza wife of the said being examined separate and apart from her said husband, and the contents of the said deed being made known and explained to her, declares that she voluntarily, and of her own free will and accord, without any fear or coercion of her husband, did, and now doth, acknowledge the signing and sealing thereof.

In testimony whereof, I have hereunto set my hand, and seal of office, the ninth day of September, in the year of our Lord one thousand eight hundred and twenty-six.

ISAAC G. BURNET, *Mayor.* [L. S.]

Received 10th March, 1827, and recorded in book No. 25, in page 342, together with the plat of the same.

GRIFFIN YEATMAN,
Recorder of Hamilton county, Ohio.

Deed from Piatt, administrator, to Morris.

Whereas Benjamin M. Piatt and Nicholas Longworth, administrators of all and singular the goods and chattels, rights and credits, which were of John H. Piatt, late of the county of Hamilton, and State of Ohio, deceased, did, at the August term, 1824, of the court of common pleas, and for the said county of Hamilton, exhibit their petition, praying for an order of said court authorizing said administrators to sell the real estate therewith exhibited, belonging to said intestate, or such parts thereof as may be necessary for the payment of the debts due by the said intestate at the time of his death; first, in setting off to the late widow of said intestate, now Martha Ann Gwynne, wife of David Gwynne, her dower in the premises. In which exhibits, among others, the following described lot and parcel of ground was and is included, (viz:) the undivided half of that triangular lot of ground situated at the junction of Columbia or Second street with east Front street, being about one hundred feet in length, and about fifty feet wide at the broadest part of said lot, more or less, bounded on west by Harmer's ground, on the southeast by east Front street, and on the north by Columbia street, being the same property sold by Benjamin M. Piatt and Nicholas Longworth, administrators of the estate of John H. Piatt, late of the county of Hamilton, and State of Ohio, dec'd, the other half owned by E. Stone; and the heirs at law of the said intestate being duly and regularly notified of the pendency of said petition, and it appearing to the satisfaction of the court that it is necessary to sell the real property of said intestate for the discharge of debts, the court thereon did appoint Thomas Henderson, Jabez Tunis, and William Oliver, three disinterested men, who being duly sworn on view of the premises contained in the exhibits, returned to the court a statement of the value thereof. And the said court, on examining the accounts of said administrators returned, and the value of the real estate, find that the said estate will be insolvent, and thereon direct that the dower in said real estate be assigned and set apart to said Martha Ann Gwynne, late the widow of said intestate, out of said real estate, in said petition and exhibits set forth, and appoint Thomas Henderson, Jabez C. Tunis, and William Oliver, three disinterested men, who are not of kin to either of the parties interested, to assign the same; after being duly sworn, assign other tracts of land and lots in said petition contained, in lieu and in satisfaction of the dower rights in the above several lots and parcels of ground, and return thereof is duly made to said court, and the same is accepted and agreed to by the said Martha Ann and David; and thereon the court direct the premises herein described, together with the other real estate in said petition contained, excepting the dower assigned to be sold, and the parcel of property above described, is returned to be of the value of two hundred and fifteen dollars. And the said court of common pleas, by their order, made at their April term, eighteen hundred and twenty-five, under the seal thereof, directed to Nicholas Longworth and Benjamin M. Piatt, administrators of the estate of John H. Piatt, deceased, commanding them to sell, or cause to be sold, the property described in said petition, including the lots and parcels of ground aforesaid described, after giving notice of the time and place of sale, by advertising the same in at least five public places in the county, and in some newspaper of the most general circulation therein, at least six weeks successively, to the best advantage, either for cash or a limited credit, the purchaser secur-

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ing the payment of the instalments as they become due; but such credit shall not extend beyond the period of three years, provided the said property, with the improvements thereon, do not sell for less than two-thirds of its appraised value, and any property aforesaid unimproved, for less than one-half of its appraised value; and that you make return thereof, &c. &c. The said administrators having given notice of the time and place of the sale of the aforesaid described lot and parcel of ground, among others, in five public places in the county of Hamilton, and in the Cincinnati Emporium six weeks successively, did, on the eighteenth day of July, eighteen hundred and twenty-five, at the court-house door, in Hamilton county aforesaid, expose said lot and parcel of ground at public sale and out cry, to the highest bidder, and George Morris bidding therefor the sum two hundred and fifteen dollars, and no person bidding more, and the same being more than two-thirds of the appraised value thereof, the same was openly and publicly knocked down to him. Now, this indenture witnesseth, that for and in consideration of the premises, and for and in consideration of two hundred and fifteen dollars, the said Benjamin M. Piatt and Nicholas Longworth, administrators as aforesaid, in hand paid, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said Benjamin M. Piatt and Nicholas Longworth have granted, bargained, and sold, and, by these presents, do grant, bargain, and sell unto the said George Morris, his heirs and assigns, the said described lot and parcel of ground, with the appurtenances: to have and to hold the said described premises, and every part thereof, so as aforesaid exposed to sale, with the appurtenances thereunto belonging, unto the said George Morris, his heirs and assigns for ever. In witness whereof, the said Benjamin M. Piatt and Nicholas Longworth have hereunto set their hands and seals, this second day of July, eighteen hundred and twenty-seven.

BENJAMIN M. PIATT, [SEAL.]
Adm'st of J. H. Piatt, deceased.
N. LONGWORTH, [SEAL.]
Adm'st of Jno. Piatt, deceased.

Signed, sealed, and delivered in the presence of
JOHN GIBSON, ISAAC G. BURNET.

STATE OF OHIO, *Hamilton county, ss.*

Before me, one of the justices assigned to keep the peace within and for said county, personally came Benjamin M. Piatt and Nicholas Longworth, administrators of John H. Piatt, deceased, and the grantors named in the foregoing deed of conveyance, who acknowledge the same to be their voluntary act and deed, for the uses and purposes therein contained. Given under my hand and seal, this day of July, 1827.

THE STATE OF OHIO, *city of Cincinnati:*

Before me, mayor of the city of Cincinnati aforesaid, personally came Nicholas Longworth and Benjamin M. Piatt, administrators of the estate of John H. Piatt, deceased, the grantors in the foregoing and within deed, and acknowledge the same to be their voluntary act and deed as administrators aforesaid, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city, this twenty-seventh day of July, eighteen hundred and twenty-seven.

ISAAC G. BURNET, *Mayor.* [L. S.]

Received 28th January, 1828, and recorded in book No. 26, in page 605.
GRIFFIN YEATMAN,
Recorder of Hamilton county, Ohio.

George W. Jones was then called by plaintiffs, and testified that he came to the city of Cincinnati in 1821. That, before leaving the city of Philadelphia, the widow of General Josiah Harmer requested him to take the agency of their claim in Cincinnati, which was then in hands of Jesse Hunt, and to receive a conveyance from Ethan Stone of the lands which had been decreed to the heirs of General Harmer, and take posession of the same. That, at that time, all the heirs, except one, were minors, and with her, who was of full age, he had no conversation respecting the matter, nor had he any written authority to act as agent for any of them. That, after arriving at Cincinnati, he applied to Stone for the conveyance, and after some difficulty and delay, he got him to go upon the ground in company with Mr. Este, the attorney at law for Harmer's heirs, and Mr. Gest, a surveyor, and the land was sett off by Stone, as he, Stone, claimed was correct, as bound on the plat and survey, by the lines S, M, M, L, L, N, N, S. The surveyor, Gest, handed to the witness a plat of the survey, and Ethan Stone executed to the heirs of Harmer a release for the above described land, which is follows:

Release from Stone to Harmer's heirs.

This indenture, made the 22d day of December, in the year eighteen hundred and twenty-one, between Ethan Stone, of Cincinnati, Ohio, of the one part, and Eliza Harmer, Josiah Harmer, and William Harmer, heirs of General Josiah Harmer, deceased, of Philadelphia, Pennsylvania, of the other part, witnesseth, that whereas the said Josiah, Eliza, and William, at the June term of the supreme court of the State of Ohio, for the county of Hamilton, obtained a decree of the said supreme court in chancery against the said Ethan Stone, that he should execute and deliver to them a deed of release of all his right, title, interest, claim, and demand whatsoever that he had to the lots described in the bill of complaint, and in the deed from John Cleves Symmes to said General Josiah Harmer, bearing date 6th of May, seventeen hundred and ninety-one, for eight lots of land in the town of Cincinnati, county of Hamilton, in the Miami purchase, each lot containing sixty square rods; the first four lots bounded on the south side of the Front or river street, lying directly in front of fort Washington, being twelve rods wide on said street, including two lots, and extending northerly from said Front street twenty rods, to the south side of the Second street from the Ohio, and adjoining said Second street twelve rods, from east to west, and on the east bounded by lands of Gov. St. Clair. The other four lots, part of the eight lots aforesaid, are bounded southerly by the north side of said Second street, twelve rods wide on said street, including two lots, on the east by the first street running northerly from the Ohio, on the east side of fort Washington, adjoining said street twenty rods, from north to south, on the north by the south side of Third street from the Ohio river, adjoining said Third street twelve rods, from east to west, the said four lots inclusively being an oblong square of twelve rods wide and twenty rods long, from street to street, and lying easterly from fort Washington, as by referring to said decree will more fully and at large appear. Now, in pursuance thereof, and in consideration of the same, the said

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Ethan Stone, for himself and his heirs, doth hereby release the said Eliza, Josiah, and William, children and heirs of Gen'l Josiah Harmer, deceased, and their heirs, to be held by them as tenants in common, all the right, title, interest, claim, and demand whatsoever that he hath to the aforesaid eight lots of land, with their appurtenances; the first four lots above named being more particularly described and bounded as follows, (viz:) Beginning on the south side of Front and Water street, at its intersection by the street laid off on the east side of the Garrison reservation, and extending eastwardly on the south side of said Front or Water street twelve rods, running northerly to Second street, parallel with the street next west of the dwelling of General William Lytle, then west along the south side of Second street twelve rods, thence southerly to the place of beginning: to have and to hold the premises hereby conveyed and released, with the appurtenances, to the only proper use and benefit of the said Eliza, Josiah, and William, their heirs and assigns for ever.

In testimony whereof, I have hereunto set my hand and seal, the day and year herein before stated.

ETHAN STONE. [SEAL.]

Signed, sealed, and delivered in the presence of
DAN'L ROE, B. J. HOLCOMB.

THE STATE OF OHIO, *Hamilton county, ss.*

Before me, a justice of the peace within and for said county, personally came Ethan Stone, the above grantor, and acknowledged the foregoing indenture to be his voluntary and deed, for the uses and purposes therein mentioned. Given under my hand and seal, the twenty-second day of December, eighteen hundred and twenty-one.

DANIEL ROE. [SEAL.]

Received 28th December, 1821, and recorded in book W, No. 2, page 355.
GRIFFIN YEATMAN,
Recorder of Hamilton county, Ohio.

That witness knew nothing of the situation of the town, or the true locality of said lots, but relied on the representations of Stone. He further stated, that he had no agency in, nor did he ever know of the additional description of the four town lots, as mentioned in the deed of release made by Stone, nor did know that it conveyed other or different ground than was described in the decree made by Symmes to Harmer. It was further proved, on the part of the plaintiff, then an execution was issued against Ethan Stone, and levied upon the triangular piece of ground at the junction of Ludlow and Front streets, and between the lines A, K, as marked on the plat, and which was sold as the property of the said Ethan Stone for seven hundred dollars, to Timothy Kirby, who received a deed of conveyance from the sheriff of said county, and that he afterwards conveyed the same to George W. Jones; all which deeds were given in evidence, and are as follows:

Sheriff's deed to Kirby.

Whereas heretofore, to wit, at the term of March of the court of common pleas of the State of Ohio, held at Cincinnati, in and for the county of Hamilton, in the year of our Lord eighteen hundred and twenty-four,

by the consideration of the judges of said court, William Lytle, administrator of Arthur St. Clair, deceased, recovered a judgment against Ethan Stone for the sum of fourteen hundred and seventy-eight dollars and twenty-eight cents damages, in a certain plea of trespass on the case, together with the sum of eleven dollars and ninety-eight cents for his costs and charges by him about his suit in that behalf expended, all of which appears of record in said court. And whereas the said William Lytle, administrator as aforesaid, afterwards, to wit, on the fourth day of February, Anno Domini eighteen hundred and twenty-five, caused to be issued out of the court aforesaid, on said judgment, a certain writ of execution, called a "fieri facias et levari facias," to William Ruffin, esquire, late sheriff of the county of Hamilton, directed, by which said writ the said sheriff was commanded, that of the goods and chattels of Ethan Stone, in his bailiwick, he should cause to be made fourteen hundred and ninety dollars and twenty-six cents, which William Lytle, administrator of Arthur St. Clair, lately, before the judges of our court of common pleas, at Cincinnati, in the county aforesaid, recovered against him, as well for his damages sustained by reason of the nonperformance of certain promises and undertakings lately made, &c., as for his costs and charges by him about his suit in that behalf expended, whereof the said Ethan Stone is convicted, as appears, &c., if so much goods and chattels of the said Ethan Stone could be found in his bailiwick, and if not, then that he should cause the same to be made of the lands and tenements of the said Ethan Stone lying in his bailiwick, and that he should have that money before the judges of our said court, at Cincinnati, on the fourth day of April then next ensuing, to be paid to the said William Lytle, administrator of Arthur St. Clair, for his damages, costs, and charges aforesaid, and that he should have then there writ. And whereas the said late sheriff, by virtue of the writ aforesaid, to him directed as aforesaid, did endorse on said writ: "February seventeenth, eighteen hundred and twenty-five, no goods or chattels;" and that, amongst other things, he had seized and taken in execution, as the property of Ethan Stone, lying and being in the city of Cincinnati, county of Hamilton, and State of Ohio, all that lot or parcel of land beginning on *on* the northwest side of Front street, at the intersection of the easterly line of Ludlow street; thence binding on Front street northeast about forty-two feet, to the south corner of No. 1, on Symmes' plat as recorded; thence binding on a line of said lot northeast about 116 feet, to Ludlow street; thence binding on Ludlow street southerly about 124 feet, to the beginning, being a triangle, being in the easterly part of Cincinnati, with the appurtenances. And whereas such other proceedings were had on the above recited judgment, that afterwards, to wit, on the twenty-seventh day of October, A. D. eighteen hundred and twenty-six, the said William Ruffin, late sheriff as aforesaid, called an inquest of five respectable disinterested freeholders, residents of the county of Hamilton aforesaid, (viz:) P. J. Halcomb, Elias Day, James Ward, Stephen Burrows, and Christopher Smith, to value and appraise said premises, who having been duly sworn by said late sheriff impartially to appraise the same, did, upon actual view thereof, value and appraise the premises above described, with the appurtenances, at the sum of one thousand and fifty dollars; a copy of said appraisement was, by said sheriff, forthwith deposited with the clerk of the court aforesaid. And whereas such other and further proceedings were had on the above recited judgment, that afterwards, to wit, on the twenty-third day of April,

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A. D. eighteen hundred and seven, the said William Lytle, administrator as aforesaid, caused to be issued out of the court aforesaid, on said judgment, a certain other writ of execution, called a "third pluris venditioni exponas," to John C. Avery, sheriff of Hamilton county directed; by which said last mentioned writ, after reciting the writ herein before recited, to the said William Ruffin, esquire, late sheriff, directed, and the return and levy aforesaid, the said sheriff was commanded to sell, or cause to be sold, the property levied on as aforesaid, for the best price that could be had for the same, and the money, from such sale arising, he should have before the judges of the court aforesaid on the sixth day of August then next ensuing, to be paid to the said William Lytle, administrator of Arthur St. Clair, deceased, for his damages, costs, and charges aforesaid, and that he should have then there that writ. And whereas the said John C. Avery aforesaid, sheriff as aforesaid, having caused the time and place sale of said property to be advertised thirty days in a certain newspaper printed in said county, of general circulation, called "The National Republican and Ohio Political Register," did, on the thirteenth day of June, in the year last aforesaid, at the court-house door, in Cincinnati, in said county, expose to sale, by public vendue, or out cry, the premises herein before described, and thereupon Timothy Kirby did then and there bid for said premises, with the appurtenance, the sum of seven hundred dollars, which sum being two-thirds of the appraised value thereof, and the highest and best bid offered for the same, the said property, with the appurtenances, was openly and publicly cried off and sold to the said Timothy Kirby for the said sum of seven hundred dollars. And whereas afterwards, to wit, on the twenty-third day of August, in the year last aforesaid, being in the term of August, A. D. eighteen hundred and twenty-seven, of the said court, the court aforesaid having carefully examined the proceedings of said William Ruffin, esquire, late sheriff, and John C. Avery, sheriff, on said executions, and being satisfied that the sale and other proceedings had thereon were, in all respects, in conformity with the requisitions and directions of the statute in such case made and provided, directed their clerk to make an entry thereof on the journal of said court, and also directed the said John C. Avery, sheriff of the county of Hamilton aforesaid, to make to the said purchasers a good and sufficient deed for said premises accordingly. Now, therefore, to confirm unto the said Timothy Kirby, the purchaser aforesaid, be it known, that the said John C. Avery, sheriff of the county of Hamilton, in the State of Ohio, by virtue of the authority aforesaid, and in consideration of the sum of seven hundred dollars, the purchase money aforesaid, to him in hand well and truly paid by the said Timothy Kirby, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and, by these presents, doth grant, bargain, sell, alien, release, convey, and confirm unto the said Timothy Kirby, his heirs and assigns, all and singular the premises aforesaid described, together with all and singular the rights, members, hereditaments, privileges, and appurtenances thereto belonging, or in any wise appertaining, and all the estate, right, title, interest, claim, and demand of him, the said Ethan Stone, of, in, to, or over the said premises, with the appurtenances: to have and to hold the said premises, with the appurtenances, unto the said Timothy Kirby, his heirs and assigns forever, in as full and ample a manner as the said John C. Avery, in his official capacity as sheriff as aforesaid, might, could, or ought to sell and convey the same.

In testimony whereof, I, the said John C. Avery, sheriff of the county of Hamilton aforesaid, have hereunto set my hand and seal, this first day of September, A. D. eighteen hundred and twenty-seven.

JOHN C. AVERY, [SEAL.]
Sheriff Hamilton county.

Signed, sealed, and delivered in the presence of
W. H. HARRISON, Jr., JAMES MCLEAN.

THE STATE OF OHIO, *Hamilton county, ss.*

Be it remembered, that, on the first day of September, Anno Domini eighteen hundred and twenty-seven, before me, Enos Woodruff, one of the associate judges of the court of common pleas of the State of Ohio, in and for Hamilton county, personally appeared John C. Avery, sheriff of the county aforesaid, in his official capacity as such, and acknowledged the foregoing deed of conveyance to be his act and deed, for the uses and purposes within mentioned.

In witness whereof, I have hereunto set my hand seal the day and year aforesaid.

ENOS WOODRUFF, *A. J. H. C.* [SEAL.]

Received 1st September, 1827, and recorded in book No. 28, in page 34.
GRIFFIN YEATMAN,
Recorder of Hamilton county, Ohio.

Deed from Kirby to Jones.

Know all men by these presents, that I, Timothy Kirby, of Cincinnati, Hamilton county, State of Ohio, for, and in consideration of the sum of seven hundred and fourteen dollars, lawful money of the United States, to me in hand, well and truly paid by George W. Jones, of said Cincinnati, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, and forever quit-claimed, and, by these presents, do grant, bargain, sell, alien, release, and forever quit-claim unto the said George W. Jones, his heirs and assigns forever—all that lot or parcel of land lying and being in Cincinnati aforesaid, bounded and described as follows, (viz:) beginning on the east side of Ludlow street, at the intersection of the northwest side of Front street, running thence N. E. forty-two feet, binding on Front street, to the south, corner of lot No. 1, of Symmes' subdivision of lots, thence binding on said lot number 1, northwest one hundred and sixteen feet to Ludlow street, thence binding on Ludlow street, southerly, one hundred and twenty-four feet to the beginning, being a triangle: My intention being to include all the land deeded to me by the sheriff of Hamilton county, by his deed, dated 1st September, 1827; and all in Ethan Stone and wife's deed, dated the 28th August 1827, which deed I hereby refer to, or to the record of them in said county records, book No. 28, pages 34, 35 and 36; and all the estate, right, title, interest, dower, and right of dower, claim and demand, both in law and equity, of me, the said Timothy Kirby, of, in, and to the said premises, and every part thereof, together with all and singular the privileges and appurtenances to the same belonging, or in any wise appertaining, and the rents, issues, and profits thereof. To have and to hold the premises hereby bargained and sold, or meant or in-

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tanded so to be, with the appurtenances, to the only proper use and behoof of the said George W. Jones, his heirs and assigns forever: and I, the said Timothy Kirby, for myself, and for my heirs, executors, and administrators, do covenant, promise, and agree to, and, with the said George W. Jones, his heirs, executors, administrators and assigns; that I, the said Timothy Kirby, my heirs, executors, and administrators, will warrant, and forever *and forever* defend the aforesaid premises, with their appurtenances, and every part and parcel thereof, unto the said George W. Jones, his heirs and assigns, against all persons claiming, or to claim, by, from, or under me, my heirs or assigns. But this covenant is not to be understood as general, being merely a special undertaking, that I have not before conveyed or incumbered the said lot or premises to any other person or persons.

In testimony whereof, I the said Timothy Kirby, together with Amelia Kirby, wife of the said Timothy Kirby, who hereby forever relinquishes all her right and claim of dower in, and to the premises, have hereunto set our hands and seals, this fifth day of September, one thousand eight hundred and twenty-seven.

T. KIRBY, [SEAL.]
AMELIA KIRBY. [SEAL.]

Signed, sealed, and acknowledged in the presence of
D. JACKSON, jun'r, E. HOTCHKISS.

THE STATE OF OHIO, *Hamilton county, ss.*

Before me, E. Hotchkiss, a justice of the peace, within and for said county, personally appeared Timothy Kirby, the above named grantor, together with Amelia Kirby, wife of said Timothy Kirby, and acknowledged the above deed of conveyance to be their voluntary act and deed, for the uses and purposes therein mentioned; and the said Amelia Kirby, wife of the said Timothy Kirby, being by me examined separate and apart from her said husband, and the contents of the said deed being made known and explained to her, declares that she voluntarily, and of her own free will and accord, without any fear or coercion of her husband, did, and now doth acknowledge the signing and sealing thereof.

In testimony whereof, I have hereunto set my hand and seal, this seventh day of September, in the year of our Lord one thousand eight hundred and twenty-seven.

E. HOTCHKISS, *Just. Peace.* [SEAL.]

Received 15th September, 1827, and recorded in book No. 26, in page 270.

GRIFFIN YEATMAN,
Recorder of Hamilton county, Ohio.

It was also proved, that Harmer and his heirs have always been in the undisturbed possession of the upper block of lots upon which the summer house was built. Mr. Jones further stated, that he attended the administrator's sale, but was not present when the premises in question were sold. It was further proved, that, about the year 1821 or 1822, Josiah Harmer, one of the heirs not then of full age, came to Cincinnati, and wishing to erect a house on the corner, between S. and A., the witness contracted, in

his behalf, with one Jonathan Whetstone, who erected a house thereon, which has ever since been, and still is, in the possession and occupancy of persons holding under said heirs, and paying rent to them; and that Josiah Harmer arrived at full age in 1823, and the other heirs as early 1825. The land claimed, as to the location, by the lessors of the plaintiff, is the location of the four southern lots, named in the deed from Symmes to Harmer, and is included in the lines A. B. C. D., and does not include the ground on which the said house is erected, between S. A. The plaintiff's counsel asked the court to instruct the jury as follows:

Plaintiff's instructions to jury.

LESSEE of Harmer's heirs, }
vs. }
GWYNNE & MORRIS. }

The counsel for the plaintiffs, move the court to instruct the jury, that, inasmuch as they claim title to the premises in dispute, under the deed from Symmes to Harmer, and not under the deed of release made by Stone, they cannot be divested of their title to the lots which that deed conveyed to Harmer; but the possession of their premises for the period of five or six years, which they supposed to be a part of those lots, though embraced in the deed of release, but not in the decree.

CASWELL & STARR.

Which instructions the court then gave to the jury, as asked for by plaintiffs: Whereupon, the defendants, counsel asked the court to instruct the jury as follows:

Defendants' instruction to jury.

1st. If, upon the whole evidence, the jury believe that, at the time the deed was made from Symmes to Harmer, under which the lessors of the plaintiff claim, both the parties understood it to cover land lying directly in front of the garrison, and not the land now claimed, the plaintiff cannot recover. *Inst'n given.*

2d. If, upon the whole evidence, the jury believes that Mrs. Harmer, the next friend of the minors, in prosecuting the bill in chancery, and obtaining the decree given in evidence, authorized George W. Jones to obtain the deed of release, under the decree, and to take possession of the lands; and that George W. Jones, under this authority, as agent for the complainant obtaining the decree, and, in conjunction with the attorney for the complainants that obtained the decree, assented to the location of the ground; and George W. Jones, as such agent, accepted a deed, and took possession of the land according to the boundaries described in the deed: the lessors of the plaintiff are concluded by his acts, and the plaintiffs cannot recover. *(Inst's not given.)*

3d. If, upon the whole evidence, the jury believe that Mrs. Harmer, the next friend of the minors in prosecuting the *the* bill in chancery, and obtaining the decree given in evidence, authorized George W. Jones to obtain the deed of release, under the decree, and to take possession of the lands; and that George W. Jones, under this authority, as agent for the

complainants obtaining the decree, and, in conjunction with the attorney for the complainants in obtaining the decree, assented to the location of the ground, and George W. Jones, as such agent, accepted a deed, and took possession of the land according to the boundaries described in such deed, and continued that possession, exercising acts of ownership as agent after all the lessors of the plaintiff obtained their full age; and the defendants purchased before the lessors of the plaintiffs disavowed the acts of George W. Jones, and without any notice or knowledge of an intention of the lessors of the plaintiffs to disavow the acts of said Jones, public sale of the adjacent lands being made, with the knowledge of said Jones, and no notice given by him that the lessors of the plaintiffs (he continuing their agent) had disavowed, or intended to disavow, his acts in locating the lands, and taking a deed for and possession thereof, the plaintiffs cannot recover. (Inst's not given.)

4. That the deed of release from E. Stone to T. Kirby, and the decree from the sheriff to T. Kirby, given in evidence in this cause, for part of the lands previously released by E. Stone to the lessors of the plaintiffs, under the decree, in execution of a contract paramount to the original title of E. Stone, and decreed to be executed, did not, in law, divest the title of the lessors of the plaintiffs, previously acquired to the lands so released by E. Stone to Kirby, and conveyed by the sheriff to Kirby, and the continuance of the lessors of the plaintiff in possession of all the land released to them, under the decree, and taken possession of by George W. Jones, and retaining the title thereto, is, in law, a continued affirmance of the acts of George W. Jones as their agent, which cannot be disavowed without releasing to E. Stone, and restoring to him, the possession of that fraction of the land, released under the decree which the location claimed in the first, does not recover. (Inst's not given.)

5. That the relation in which the defendants are proved to stand to those under whom they claim title, does not warrant the jury to infer that the defendants had knowledge that the lessors of the plaintiffs had disavowed, or intended to disavow, the location as accepted by George W. Jones. The court charge the jury, as requested by the defendants, upon the first instruction asked by them, but refuse the residue of the instructions, in manner and form as the same was prayed for, to which several opinions of the court, in delivering their charge as aforesaid, the defendants accept, and pray that this, their bill, may be sealed, &c. (Inst's not given.)

J. W. CAMPBELL, [SEAL.]

And afterwards, to wit, on the twentieth day of July, Anno Domini one thousand eight hundred and thirty-one, the defendants filed in the clerk's office of said court, here, the following bond, to wit:

Appeal bond.

Know all men by these presents, that we, George Morris, David Gwynne, Thomas Ewing, and Charles Hammond, are held and firmly bound unto Eliza Harmer, Josiah Harmer, and William Harmer, children and heirs of Josiah Harmer, deceased, which said Eliza Harmer is intermarried with Evan Thomas, ju'r, in the just sum of five hundred dollars, lawful money of the United States, to be paid to the said heirs of Josiah Harmer, deceased,

their heirs, executors, administrators, and assigns, jointly and severally, firmly, by these presents. Sealed with our seals, this 20th day of July, A. D. 1831.

The condition of the above obligation is such, that whereas the said heirs of Josiah Harmer, deceased, in the name of James Jackson, ex dem. Josiah Harmer's heirs, did, at the December term of the circuit court of the United States, in the district of Ohio, held at Columbus, in said district, on the fourth Monday of December, 1829, recover a judgment in an action of ejectment against the said George Morris and David Gwynne, for four lots of ground situated in the city (formerly town) of Cincinnati, in the county of Hamilton, on the north side of Front street, and between Ludlow and Lawrence streets, two of which lots front on said Front street 12 rods in width, the other two being immediately in the rear, and altogether forming a parallelogram of twelve roads, or 198 feet on said Front street, and running back 12 rods, or 330 feet, and crossing Columbia street as now laid out, each lot containing 60 square perches: and whereas the said David Gwynne and George Morris have procured the allowance of a writ of error to remove the record and proceedings in said cause to the Supreme court of the United States. Now, if the said George and David shall well and truly prosecute their said writ of error, to effect, and pay all cost that may accrue thereon, provided the said judgment shall be affirmed in said Supreme Court, then this obligation to be void, otherwise to be, and remain in full force and virtue.

[SEAL.]
[SEAL.]
THOMAS EWING, [SEAL.]
C. HAMMOND, [SEAL.]

Signed, sealed, and delivered in presence of
WILLIAM MINER.

On the back of said aforegoing recited bond, is the following, to wit: "Approved, July 20th, 1831.

J. W. CAMPBELL."

Clerk's certificate.

THE UNITED STATES OF AMERICA, *District of Ohio, sct.*

I, William Miner, clerk of the 7th circuit court of the United States, in and for the district of Ohio aforesaid, do hereby certify the aforegoing to be a true and examined transcript of the record, judgment, and procedings therein, in a suit determined in said court, in which the lessee of Josiah Harmer's heirs was plaintiffs, and George Morris and David Gwynne defendants, as the same remains on record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 20th day of July, Anno Domini one thousand eight hundred and thirty-one, and of the American Independence the 56th.

Att.

WILLIAM MINER, *Clerk.* [L. S.]

This transcript, seal, &c., $71 75.

The United States of America to the honorable the judges of the circuit court of the United States for the seventh circuit and disrict of Ohio, greeting:

Whereas in the record and process, and also in the rendering judgment in a certain action of ejectment which was in the said court, between the lessee of Josiah Harmer's heirs, plaintiff, and George Morris and David Gwynne, defendants, manifest error hath intervened, as it is said, to the great damage of the said George Morris and David Gwynne, as by their complaint we are informed; and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you, that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the judges of the Supreme Court of the United States, on the first day of the next term of said court, so that the judgment aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness, the honorable John Marshall, chief justice of the United States of America, this 20th day of July, in the year of our Lord, one thousand eight hundred and thirty-one, and in the 56th year of the American independence. Attest: WILLIAM MINER, *Clerk.* [L. S.]

I, John McLean, one of the associate judges of the Supreme Court of the United States, do allow this writ of error. Witness my hand and seal, this 20th day of July, 1831. JOHN McLEAN. [SEAL.]

THE UNITED STATES OF AMERICA, *Supreme Court of the United States, to James Jackson, ex dem. the heirs of Josiah Harmer, deceased, greeting:*

Whereas George Morris and David Gwynne obtained the allowance of our writ of error to the circuit court of the United States for the seventh circuit and district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington, on the second Monday in the month of January next, the record of a certain plaint, process, proceedings, and judgment in an action of ejectment, wherein you, the said James Jackson, ex dem. the heirs of Josiah Harmer, deceased, in that action lately recovered against the said George Morris and David Gwynne a judgment and costs, as by the said record in the said circuit court and district aforesaid, remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said George Morris and David Gwynne we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited, to be and appear before the judges of the said Supreme Court at the city of Washington, at the next term of said court to be holden on the Monday in the month of next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness, the honorable John Marshall, chief justice of the United States of America, this 20th day of July, in the year of our Lord one thousand eight hundred and thirty-one, and in the fifty sixth year of the American independence. Attest: JOHN McLEAN. [L. S.]

We acknowledge service of this citation for the def'ts in error.
21 *July*, 1831. CASWELL & STARR, *Atty's.*